

1634

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES)

CHARLES A. BURCKHARDT,

Appellant,

vs.

THE NORTHWESTERN NATIONAL BANK, a National Banking Association, CHARLES K. SPAULDING, PHIL METSCHAN, A. D. CHARLTON, E. S. COLLINS, CHAUNCEY McCORMICK, NATT McDUGALL, FREDERICK F. PITTOCK, MARK SKINNER, CHARLES H. STEWART, O. L. PRICE, EMERY OLMSTEAD, JAMES F. TWOHY and CHARLES A. MORDEN,

Appellees,

and

FRED A. BALLIN,

Appellant,

vs.

THE NORTHWESTERN NATIONAL BANK, a National Banking Association, CHARLES K. SPAULDING, PHIL METSCHAN, A. D. CHARLTON, E. S. COLLINS, CHAUNCEY McCORMICK, NATT McDUGALL, FREDERICK F. PITTOCK, MARK SKINNER, CHARLES H. STEWART, O. L. PRICE, EMERY OLMSTEAD, JAMES F. TWOHY and CHARLES A. MORDEN,

Appellees.

VOLUME I.

(Pages 1 to 384, Inclusive.)

Upon Appeals from the United States District Court for the District of Oregon.

FILED
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Mr. WILLIAM C. BRISTOL, Wilcox Building,
Portland, Oregon, for Appellants Charles A.
Burkhardt and Fred A. Ballin.

CAREY & KERR and CHARLES A. HART, Yeon
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western National Bank, A. D. Charlton, E. S.
Collins, Natt McDougall, Frederick F. Pittock,
Mark Skinner, Charles H. Stewart, O. L. Price,
and James F. Twohy, and for Chauncey Mc-
Cormick, Mr. M. A. ZOLLINGER, Selling
Building, Portland, Oregon, for Appellee, E. S.
Collins, WINTER and MAGUIRE, Pacific
Bldg., for Appellee Charles K. Spaulding, DEY,
HAMPSON and NELSON and ALFRED A.
HAMPSON, Pacific Building, Portland, Ore-
gon, for Appellee Phil Metschan, Mr. D. P.
PRICE, American Bank Building, Portland,
Oregon, and Mr. JOHN F. LOGAN, Mohawk
Building, Portland, Oregon, for Appellee
Charles A. Morden, SHEPPARD, PHILLIPS
and RALSTON and CHESTER A. SHEP-
PARD, Public Service Building, Portland, Ore-
gon, for Emery Olmstead.

In the District Court of the United States for the
District of Oregon.

November Term, 1927.

BE IT REMEMBERED, That on the 7th day of
November, 1927, there was duly filed in the District
Court of the United States for the District of Ore-
gon, a bill of complaint in words and figures as fol-
lows, to wit: [*3]

In the District Court of the United States in and
for the District of Oregon.

IN EQUITY—No. E.—8936.

CHARLES A. BURCKHARDT,

Complainant,

vs.

THE NORTHWESTERN NATIONAL BANK,
CHARLES K. SPAULDING, PHIL METS-
CHAN, A. D. CHARLTON, E. S. COL-
LINS, CHAUNCEY McCORMICK, NATT
McDOUGALL, FREDERICK F. PIT-
TOCK, MARK SKINNER, CHARLES
H. STEWART, O. L. PRICE, EMERY
OLMSTEAD, JAMES F. TWOHY and
CHARLES A. MORDEN,

Respondents.

*Page-number appearing at the foot of page of original certified
Transcript of Record.

COMPLAINT.

(Filed Nov. 7th, 1927.)

To the Honorable Judges of the Above-entitled Court, in Equity Sitting:

The complaint of Charles A. Burekhardt, a resident of the city of Seattle in the State of Washington and a citizen of said State of Washington, exhibited against the above-named respondents, all save Chauncey McCormick being residents and citizens of the State of Oregon and the said Chauncey McCormick a resident of the State of Illinois, doth for cause of suit against the above-named respondents respectfully set forth and show:

Par. 1. That Charles A. Burekhardt, above-named complainant and a resident and citizen of the State and District of Washington in the city of Seattle aforesaid, [4] is a citizen and resident of a different state than any of the above-named respondents and that there is a diversity of citizenship existing between the complainant and all of the respondents.

That Chauncey McCormick is a resident and citizen of the State of Illinois.

That The Northwestern National Bank is an association under the laws of the United States for carrying on the business of banking under and pursuant to Revised Statutes, Section 5133 and all related sections, defined and designated as Title 12 in United States Code Annotated, as enacted by Congress June 28th and approved June 30, 1926, and as existing in force December 7, 1925, and prior

thereto, with acts amendatory and supplemental thereto and under and pursuant to the laws of the United States in that behalf by Congress ordained and enacted, and during all the times herein mentioned was doing business in the city of Portland and State and District of Oregon and within the jurisdiction of this Honorable Court.

That the respondents O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metschan, Frederick F. Pittock, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James F. Twohy were and are the directors of aforesaid The Northwestern National Bank and still are and remain the directors, and all of them are and each of them is a resident and citizen of the State of Oregon.

That Charles A. Morden was some time a director of said Bank and is, together with O. L. Price, trustee of the H. L. Pittock estate, and for part of the time herein mentioned was sometime a director of said Bank, and also is or lately was the president, [5] treasurer and manager of Oregonian Publishing Company, a composite part of said H. L. Pittock estate, together with O. L. Price as his co-trustee, and a resident and citizen of the State of Oregon.

That Emery Olmstead was and continued to be after the first of the year 1927 president and director of said Bank, but on or about the 28th day of February, 1927, resigned as president and director thereof and the said O. L. Price succeeded him as president of said Bank, having theretofore been

and for some time past lately was chairman of the board of directors of said Bank.

Par. 2. That the amount involved in this suit exceeds the sum of three thousand dollars (\$3,000.-00), exclusive of interest and costs.

Par. 3. That the banking laws of the United States, to wit, Section 5147 of the Revised Statutes as amended by the Act of February 20, 1925, Chapter 274, 43 Statutes 955, and now set forth as Section 73 of Title 12 of United States Code Annotated, and Section 93 of said Title 12 of said code derived from the Act of June 3, 1864, and incorporated in the Revised Statutes as Section 5239, are part of and involved with the subject matter of this suit.

Par. 4. That this suit is instituted, commenced and prosecuted by the complainant Charles A. Burckhardt as a stockholder of The Northwestern National Bank upon [6] behalf of himself and all other stockholders of said Bank for that said Bank and its present directors as aforesaid are the persons by and through whom the matters complained about occurred, were occasioned and were committed and for injuries to said Bank and to its said stockholders by the acts of themselves, the aforesaid directors, no one or any of them, nor said Bank, will sue or cause to be sued nor bring to account any one of themselves as between themselves and said Bank or for and on behalf of any stockholder the matters and things complained of herein, although before the filing of this complaint demand was made that they should correct and right the wrongs herein suffered and that said Bank should

proceed to enforce the duties and liabilities of said directors herein complained about.

That this complainant was and is a holder of capital stock or of shares of The Northwestern National Bank during the time of the transactions herein complained of and from and after the date of the issuance of the certificate of stock the matters and things complained of occurred down to and inclusive of the present time, and that this suit is not a collusive one to confer in a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

That this complainant does not have any influence or voice with other shareholders or directors nor is he in any manner identified with said directors, but all of the said above-named respondents and said Bank are and were opposed during all the times herein mentioned to the conduct of the business of said Bank in a way and manner that would and could have obviated the filing of this suit and would and could have protected [7] the rights of the minority shareholders and protected the property and assets of said Bank, but upon the contrary the majority of the stock held by said above-named respondents, directors is wholly adverse to the minority and to this complainant and bent upon carrying out at all hazards the matters and things herein complained about through absolute control, through stock ownership by them, the said respondents, as directors, so that they would and did not respect any demand or request of this complainant and each and every one of said respondents are and

were antagonistic to the bringing of any suit and that as stockholders their interests were in every way and are antagonistic to the interests of this complainant, whereby and wherein they attempt to affirm the matters and things done and transacted by them herein complained about, and moreover said respondents and all of them, together with said Bank, although having abdicated control and possession of all assets and gone into liquidation as to all matters, save and except such parts of them as related to the interests of stockholders only and the carrying out of such matters as said directors themselves wished to affirm, the aforesaid respondents are thus using their position to the injury of this complainant, to the injury of said Bank and to the injury of minority stockholders as herein complained about.

Par. 5. That O. L. Price as trustee of the H. L. Pittock estate and Charles A. Morden as cotrustee of the H. L. Pittock estate, and the said O. L. Price always director and sometime chairman of the board and lately during the [8] year 1927 president of said Bank and the said Charles A. Morden himself at the time a director and a member of the board of said Bank, are possessed and hold as trustees of said H. L. Pittock estate seventy-six hundred and ninety-six (7696) shares of the capital stock of said Bank, in so far as this complainant can obtain any information and if it is otherwise or more, this complainant craves that the records be shown thereabout, and that in addition thereto O. L. Price personally holds and has two hundred and ninety (290)

shares, and that Frederick F. Pittock has and holds one hundred (100) shares, and that Charles A. Morden individually had or held fifty (50) shares, but whether he holds them now this complainant does not fully know, but this complainant says that there are approximately eighty-two hundred and eighty-six (8286) shares identified with the trustees of the H. L. Pittock estate and under their domination and control, and if not now there lately was during the time of the matters and things herein complained of and just before the institution of this suit such relationship of and between themselves and with the other respondents above named that with said eighty-two hundred and eighty-six (8286) shares or thereabouts, coupled with some fifty (50) shares held in the name of Edgar B. Piper, identified with the Oregonian Publishing Company, there is somewhere and about not less than eighty-three hundred and thirty-six (8336) shares under their control alone, and this control and ownership of shares of capital stock of said Bank, taken together with the amounts of shares held and owned and standing in the name of other respondents, to wit, Charlton, Collins, McCormick, or Miami Corporation, whichever it is, controlled by McCormick, McDougall, Olmstead, [9] Metschan, Spaulding, Stewart and Twohy, so far as this complainant can ascertain and become aware, comprehends an additional thirty-seven hundred and fifty-one (3751) shares, or more, giving to said respondents, directors, the entire and absolute control of said capital stock and any stockholders' meeting, howsoever

called, will be controlled and dominated by their said stock and with their allied and confederated interests to the exclusion of any right expressed or to be expressed by this complainant or any other minority stockholder; and this has been the fact during all the times herein mentioned and still exists as the fact.

Par. 6. That on or about the 25th day of June, 1918, the complainant was solicited to be and become by the directors of said Bank a stockholder and complainant was persuaded to purchase and take two hundred and fifty (250) shares of the capital stock of said The Northwestern National Bank at a represented reasonable market value of one hundred and twenty-five dollars (\$125.00) per share and this complainant paid to said Bank on said date thirty-one thousand two hundred and fifty dollars (\$31,250.00) and received certificate No. 98 for said two hundred and fifty (250) shares and has ever since and does now hold and own the same;

That at the time complainant became such stockholder the said directors at and during the times of their solicitation in said year 1918 for this complainant to become a stockholder informed and stated to complainant and represented to him that the condition of said Bank with H. L. Pittock then living as president [10] and with the Pittock fortune and the influence and prestige of his position and identification in the community, as well as the support of the Oregonian and the Oregonian Publishing Company, gave and made for said Bank an unequalled foundation and support in the community

and that its financial condition was good and prosperous.

Par. 7. That all of the directors, respondents above named, qualified and took the oath prescribed by law aforesaid before entering upon their respective duties and responsibilities of their office and promised and agreed with this complainant and all other stockholders and with said Bank, so far as the duty involved upon them or each of them, diligently and honestly to administer and each of them would diligently and honestly administer the affairs of the said The Northwestern National Bank, and that no one of them would and that they would not knowingly violate or willingly permit to be violated any of the provisions of the National Bank Act aforesaid.

Par. 8. That from the time of the organization of said Bank down to and inclusive of the 29th day of March, 1927, the interest of H. L. Pittock in his lifetime and those identified with him and the trustees of the H. L. Pittock estate, to wit, Price and Morden, and those identified with them of the above-named directors, respondents as hereinbefore set forth, were and continued to be the dominant and controlling factor in said Bank and in and about the conduct of its said business [11] and in the selection and maintenance of the directors of said Bank.

Par. 9. That said Bank commenced business January 2, 1913, with a capital of \$500,000.00 and a surplus of \$100,000.00 and continued with that apparent capital and surplus until on or about the

— day of — 19—, when its capital stock was increased to \$1,000,000.00 and its surplus to \$200,000.00; and with that apparent capital and surplus it continued down to and inclusive of the 2d day of July, 1922, when it again increased its capital for the third time to \$2,000,000.00 with \$400,000.00 surplus, and continued with this apparent capital and surplus to and until the 30th day of March, 1927; but out of this last increase was taken upwards of three hundred to three hundred and fifty thousand dollars contributed at the rate of \$150.00 per share to be and was charged against and to reduce uncollectible items then due said Bank with the knowledge, permission and by the act of said respondent directors.

Par. 10. That some time between July 2, 1922, and December 31, 1926, said respondent directors of said Bank knowingly and willingly and with full and complete knowledge and information in respect of each specifically enumerated transaction set forth in this paragraph, so far as complainant can now set forth the same, the facts thereabout being all in possession of said respondents, caused, required and directed to be lost to said Bank in the said transactions:

Item 1. Dufur Orchards Co., in the vicinity [12] of Dufar, Oregon,	\$400,000.00
Item 2. A. O. Andersen & Co.....	185,000.00
Item 3. A. Rupert & Co.....	200,000.00
Item 4. Bankers Discount Corpora- tion	150,000.00
Item 5. Phez Corporation	125,000.00

Item 6.	Rock Creek Ranch, sometimes known as the Creath and Burke transactions coupled with Portland Wool Warehouse...	75,000.00
Item 7.	C. J. Smith, S. F. Wilson and M. L. Jones, Olex...	150,000.00
Item 8.	Davin Michellvi Sheep Co.,	200,000.00
Item 9.	G. E. Miller & Co.....	40,000.00
Item 10.	D. M. Stuart, Timber Dealer	50,000.00
Item 11.	Sam Nemiro, Clothier.....	30,000.00
Item 12.	J. E. Wheeler.....	250,000.00
Item 13.	McCormick Lumber Co.....	150,000.00
Item 14.	Wheeler Timber Co.....	90,000.00
Item 15.	W. E. Wheeler Estate...	95,000.00
Item 16.	Telegram Publishing Company	125,000.00

and this complainant cannot say and does not know how much more because the facts are in the possession of the respondents, but charges and says that the records of said Bank will show substantially as in this paragraph set forth, and that with the knowledge and information and notice to each of the directors thereabout, coupled with the fact that in the fall of 1925 or thereabouts and since said time, as well perhaps as prior thereto, the Examiner of National Banks in and of the City of Portland, the name of whom is to this complainant unknown, required all of the Wheeler lines to be reduced upon the ground that there was too much loaned by said Bank to one person and said directors there and then with knowledge of that fact agreed that the

lines should be reduced, but nevertheless willfully and knowingly violated [13] the requirements of the Examiner, the requirements of the law and did willfully and knowingly cause to be misapplied and lost to said Bank thereby all of its current and proper assets so that it was forced into liquidation on or about the 30th of March, 1927, by said directors.

Par. 11. That part of the transactions set forth in paragraph 10 hereof and indeed the Wheeler transactions were of record when Charles A. Morden, at the suggestion of O. L. Price, came to be put upon the board of said Bank and was elected a director of said Bank and at that time O. L. Price was chairman of the board and he, Price, then put Morden on the examining committee together with Metschan and Charlton, fellow directors, and they, Metschan, Charlton and Morden, ascertained and knew of the condition of said Bank and of said transactions and reported the same to the board and to their fellow directors and all of the directors, respondents, knew sufficient to put an ordinary and prudent business man upon inquiry as to the actual status and relations of the affairs of said Bank, but said directors wilfully and knowingly failed and neglected to do or cause to be done any of those things which ordinary prudent and careful men similarly situated in business transactions would do to save and prevent losses and wrong administration of bank and financial affairs, and upon ascertaining the status of said Bank and without informing the stockholders and shareholders

situated like this complainant, but suppressing and keeping to themselves and among their fellow directors hereinabove named the said disclosed facts, Morden demanded to be released as [14] a director and resigned as such and that his stock, to wit, fifty (50) shares, be purchased for the sum of sixty-two hundred and fifty dollars (\$6,250.00) or thereabouts so far as this complainant can allege the fact to be on information and belief, and believing it to be creditable information does say on such belief that the said Morden was succeeded on said examining committee of said board of directors for said Bank by Charles K. Spaulding, one of the directors, and thereafter Phil Metschan, Charles K. Spaulding and A. D. Charlton, the last of whom had been a director since the organization of said Bank, constituted said Examining Committee for said board of directors, and they down to and including the time when Morden left and resigned to the year 1927 made examinations and reports of affairs of the Bank and reported to the board of directors and advised and informed their fellow directors of, in and about all of the same, and did make one report to said directors which was a confidential or private or secret report, original of which was given to Mark Skinner, vice-president, and copies to other officers and directors and kept in the files of said Bank, whereas another and different report was made to the District Bank Examiner and likewise to the Comptroller of the Currency of the United States in such way and manner that the private report would show the real and

true condition of said Bank, while the report to the District Bank Examiner and Comptroller of the Currency would show a favorable, but incorrect, condition of said Bank, and that if said reports were produced in this court this complainant charges they will show as herein alleged, and that these directors hereinbefore named did during the year 1926, did during the year 1925, and did during [15] the year 1927, and for aught this complainant knows many times prior thereto, suppress and conceal and knowingly prevent share and stockholders, like this complainant and others not on the board of directors likewise stockholders, and officials of the United States Government in that behalf given the privilege of law so as to know, the real and actual condition of said Bank and its affairs.

Par. 12. That in addition to said Examining Committee there was an executive committee of seven (7) directors and so far as this complainant can inform the Court there were meetings of the whole board in each month and when the whole board met they approved the actions of the executive committee and also of the Examining Committee, and said whole board consisted of the respondents named individually in the caption of this complaint, and the Examining Committee reported to the board every six months, and the executive committee during these periods consisted of O. L. Price, chairman and chairman of the board, A. D. Charlton, Charles K. Spaulding, Phil Metschan, Frederick F. Pittock, Mark Skinner and maybe some

others, but at least those, and the complainant alleges that it should and probably did include Emery Olmstead as one of the members of said executive committee, and in addition to the information conveyed to said board of directors of said Bank by its said committees there was an Examiner's report made on or about the 26th day of November, 1926, directing that all slow and doubtful paper be taken up and retired and a segregation of undesirable assets amounting approximately to one million five hundred thousand dollars [16] (\$1,500,000.00) or thereabouts, with items directed to come out of some seven hundred and fifty thousand dollars (\$750,000.00), with reductions required in uncollectible credits of some five hundred thousand dollars (\$500,000.00), and that there should be immediately retired some two hundred and fifty thousand dollars (\$250,000.00) of slow and doubtful paper, and so far as this complainant can say and allege each and every one of said respondents individually named in the caption hereof as directors of said Bank at said time knew and were familiar with the aforesaid condition of said Bank and that their acts and doings over and during the period from the time of the increase of the capital stock to \$2,000.00 down to and inclusive of March 30, 1927, caused the liquidation of said Bank and it to go out of business with consequent loss, damage and liability to its stock and shareholders as herein shall more fully appear.

Par. 13. That during all this time and between said periods aforesaid said directors suppressed and

concealed from this complainant and other share and stockholders of said Bank other than themselves, the said directors, in the interest of whom they were allied as aforesaid, all facts and circumstances connected with their transactions and with said Bank and gave no information, knowledge or notice to said share or stockholders whereby they might or could have protected themselves and their credit in and about transactions with said Bank, and such stockholders' meetings as were had were always controlled and antagonistically manipulated by those who were as hereinbefore alleged in possession of the majority and nearly [17] two-thirds of the stock and with the assistance of their friends practically all of the stock except for a few minority stockholders like this complainant and therewith in entire control of said Bank.

Par. 14. That in the year 1923 and notwithstanding that at that time J. E. Wheeler, Wheeler Estate, Wheeler Timber Company, Telegram Publishing Company and other allied Wheeler interests were, as far as this complainant can ascertain, indebted to this Bank in the sum of approximately six hundred thousand dollars (\$600,000.00), and the said board of directors of said Bank, the respondents above named, and those acting with them at that time, permitted and allowed, when they wilfully and knowingly knew and had ascertained that said Bank was then under consideration of being sold and disposed of by O. L. Price, L. B. Menefee, R. V. Jones and Guy M. Standifer, through stock control, to The United States National Bank, herein-

after mentioned, in the city of Portland, Oregon, unless as they, the said board, permitted and caused and allowed to come about said J. E. Wheeler, then so indebted to said Bank, should purchase or arrange credit to purchase from the said Guy M. Standifer, L. B. Menefee and R. V. Jones forty-two hundred (4200) shares of the capital stock of said Bank at one hundred and fifty dollars (\$150.00) the share or a total of six hundred and thirty thousand dollars (\$630,000.00), and so far as this complainant knows or can ascertain and so inform the Court, this complainant causes your Honor to know and be advised and informed that said O. L. Price and his fellow directors connived, permitted, allowed and acknowledged the purchase and the arrangement of the credit [18] for purchase by said J. E. Wheeler of all of said shares at said price of one hundred and fifty dollars (\$150.00) per share, to wit, the said forty-two hundred (4200) shares, and ever since said time and now, so far as this complainant knows, the said J. E. Wheeler has been carrying said shares as share and stockholder of said Bank and some forty-seven hundred (4700) shares thereof stand as shareholder in his name, and if the records of said Bank are produced and shown herein it will be and appear that the transfers of said stock from said Menefee and from said Jones and from said Standifer were so made and have so remained from the time of such transfer to the present time to the knowledge, notice and information of all of said directors of said Bank, and this complainant doth thereabout charge

and allege the fact to be that said directors permitted the sale and transfer of said shares at one hundred and fifty dollars (\$150.00) a share without regard to the interest of any other stockholder or shareholder as to that time, and without regard to the interests of this complainant, notwithstanding the matters and things set forth in paragraph 9 hereof; and that each of these things happened, occasioned and were done to the impairment of the Bank's condition and the destruction of its capital stock values by and with the knowledge, action, direction and consent of said above-named directors, respondents herein, as hereinafter alleged.

Par. 15. That during the years 1925 and 1926 and in the course and practice of said Bank there was kept a daily position or statement-book showing each day's previous business wherein "ITEMS IN TRANSIT" were treated as cash [19] and were included in reserve calculation as against deposits and each and every one of the directors named herein, to wit, Charles K. Spaulding, Phil Metschan, A. D. Charlton, E. S. Collins, Chauncey McCormic, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price, Emery Olmstead, James F. Twohy and Charles A. Morden, saw, knew what was in said Bank, read it and understood what it meant and discussed the amount of the same and were informed by the Bank Examiners and by the Comptroller of the Currency, and particularly was O. L. Price, Charles H. Stewart and Phil Metschan, who went to see the Comptroller in the city of Washington, D. C., ad-

vised and informed and thereby knew how large the sums had been that had been charged off and how stupendous were the transactions representing the impairment of the Bank's assets and capital and that the Comptroller advised and required that a million dollars in cash be supplied and be taken out of as, of and upon a plan through a holding company or by the use of what is known as a liquidating organization in connection with said Bank so that the cash might be supplied for the slow and doubtful items caused by the management of said directors and said Bank put upon a current condition and that if this were done and the necessary money contributed the said board of directors would be authorized to pay dividends in the spring of 1927, and thereupon said directors of said Bank set about a proposal to raise seven hundred and fifty thousand dollars (\$750,000.00) by each stockholder putting up thirty-seven and 50/100 dollars (\$37.50) based upon said twenty thousand (20,000) shares, and seven hundred and fifty thousand dollars (\$750,000.00) to be bonded and retired [20] making possible the reconstruction suggested by the Comptroller, but said directors knowingly, willfully and intentionally failed and refused to comply with the directions on request of said Comptroller in that behalf, and nevertheless continued to accommodate the said J. E. Wheeler based upon his endorsements with loans passed on by said directors arising and during and continuing through the fall of the year 1926 and into the year 1927 in violation of the National Banking Act wherein it is provided

that the total of such liabilities shall in no event exceed thirty per cent of the capital stock of the association, which would have been not more than six hundred thousand dollars (\$600,000.00), to increase and multiply to the sum of six hundred and thirty-four thousand dollars (\$634,000.00) or more, so far as your complainant is informed and believes, including the Telegram Publishing Company for some \$120,000.00, J. E. Wheeler individually for some \$234,000.00, Wheeler Timber Company for some \$95,000.00, W. E. Wheeler estate for another \$95,000.00 and W. M. Wheeler, by way of acceptances, in the sum of \$90,000.00 or over, all, it is true, guaranteed by the said Wheeler, but composing and comprising more than thirty per cent of the capital stock of the association at that time, and if there was included in the liability of either company or firm the liabilities of the several members thereof it will upon accounting and production of records of said Bank and of said directors be and appear that the same exceeded at all times the amounts allowed by law to the knowledge of said directors and with the willful intent and knowledge of said directors to impair, and they did impair, the assets of said Bank. [21]

Par. 16. That on the turn of the year 1927, these aforesaid directors, respondents above named, and in the matters and things hereinbefore alleged continuing and still continuing to do and transact the business of said Bank in said manner, allowed and permitted the said Bank under their control and direction to get into the financial difficulties so

that it could not pay its depositors and exposed its stockholders and shareholders to be and become liable over, including this complainant, to assessed liabilities or to liabilities to undertaking banks, to wit, The United States National Bank and the First National Bank, both of the city of Portland, by some time or in some manner to this complainant unknown, and about February, 1927, leaving the management and direction and the affairs of said Bank entirely in the charge and management of O. L. Price, having on or about the last of February or the first of March, 1927, elected him president, and notwithstanding that at or about that time or in the month of February all of said directors had before them plans and proposals upon which had they acted they could have saved said Bank and its assets and prevented its liquidation in this, to wit:

First. That a plan was formulated whereby all stockholders not consenting could have been paid and retired and more than two-thirds were willing, capable and ready and had signed up and executed the plan so to do, that is to say, change said Bank into State Bank and Trust Company with a capital stock sufficient to preserve all of its assets, retire all of its unbankable or disallowed items, and said O. L. Price [22] and those acting with him agreed to said plan, executed the preliminary paper therefor and for the organization of said Bank in said manner and said directors agreeing thereto and the necessary amount of stock and money was fully subscribed and complete, and yet the said

Price and the said directors acting under his dominance and control refused to carry out and accomplish the said plan and disregarded it entirely and failed and neglected to observe the suggestions of the Comptroller and Bank Examiner as to the necessities of the situation by so refusing,—

Second. That at or about this time the Telegram Publishing Company and some of the Wheeler institutions became involved in legal proceedings or were threatened therewith and it was brought about that J. E. Wheeler for the further security and protection of said Bank was prevailed upon to turn over and entirely divest himself of, for the full protection of the stockholders of said Bank and its depositors and this complainant, all of his properties, including said Telegram and his interests in California, Oregon and elsewhere, to the full payment and satisfaction first of all of his indebtedness and obligations to said Bank, but said directors, particularly Metschan, Collins and Price, refused to consider or permit the paper known as the Telegram, published by the Telegram Publishing Company, to be sold or disposed of and refused to consider or consent to the transfer by Wheeler of assets and property sufficient to cover the whole transactions of the said Wheeler and his companies with said Bank and entirely disregard their aforesaid duties as herein alleged to said Bank as said directors under [23] their said several oaths and sat by and did nothing, so far as this complainant is informed and believes and therefore he alleges the fact to be, until the Telegram Publishing Company virtually

went into bankruptcy or was thereabout so to do and Wheeler involved by the rejection of said directors and their said negligent act and doings in refusing and failing as they then could have done to take over all of the assets of said Wheeler, including said paper, and save loss to said Bank,

And so it was that on or about the 2d day of March, 1927, the officers and directors of The Northwestern National Bank caused to be published on the first page of the Morning Oregonian and given out a statement as follows:

“The Northwestern National Bank announces that the Pittock estate has acquired a larger measure of interest and control in the bank corporation. Associated with the Pittock estate in ownership and operation of the bank are Messrs. E. S. Collins, A. D. Charlton, Chauncey McCormick, Natt McDougall, Phil Metschan, Frederick F. Pittock, O. L. Price, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James F. Twohy, directors, all well known in Portland and the northwest as men of affairs.

O. L. Price has been elected president of the bank and will have active charge of its business. It will continue to serve the public as a financial institution of first importance and known responsibility.”

pursuant to which the said named persons, who are the same identical named persons herein named as respondents and as directors of said bank, left the said Price as president of said bank and director

in virtual and sole management and charge thereof and he, the said Price, with the connivance, consent and willingness of said [24] board of directors to abdicate its responsibilities and duties thereabout caused to be made an agreement with the Portland Clearing House and through it with The United States National Bank and the First National Bank, both of Portland, Oregon, wherein and whereby all matters and things pertaining to the banking business and the conduct of it in the city of Portland by The Northwestern National Bank, without the consent at that time of the necessary two-thirds under the law of shareholders, including this complainant, was lost and utterly destroyed and at the same time the shareholders and stockholders of said The Northwestern National Bank, including this complainant, thereby subjected to each and every liability to the undertaking banks that may have been or could be said to have been created by the said Price and those directors acting with and about him in that matter, for that said Price and said directors then and there permitted, to wit, in the month of March, 1927, a run upon said bank, being fully advised and informed how they might have prevented the same and how they could have taken steps to have avoided the same, but they, the said Price and his accompanying directors, although fully aware and well advised and informed of the situation, refused and failed to act or do anything to the prejudice and loss of this complainant and all other stockholders of said bank.

Par. 17. That said directors and Price with

other officers of said bank during said times and in the month of March, 1927, made some secret and undisclosed agreement, placed in charge of and with James B. Kerr and by him locked and kept or by someone under his or their [25] direction in a box or vault in Security Savings & Trust Company in the city of Portland, Oregon, wherein and whereby certain terms and conditions of transfer to said underwriting banks, to wit, The United States National Bank and the First National Bank of Portland, Oregon, is set forth with the liabilities and responsibilities involved involving the share and stockholders of said bank, and this complainant prays disclosure of said agreement so that your Honor may be and become informed thereabout for that said agreement affects the present doings of said directors undisclosed to the stockholders other than themselves, and affects the rights of and state of said bank in which complainant as shareholder and all other stockholders similarly situated are interested.

Par. 18. That up to the time the bank closed in March, 1927, the losses made by said directors, so far as this complainant can specify, amounted to more than two million dollars and impaired the capital stock of said bank, and willfully depreciated and intentionally destroyed the investment of moneys of this complainant therein made as aforesaid.

Par. 19. That up to the time said bank closed its doors and its banking business was transferred to the aforesaid named banks said directors, re-

spondents above named, did negligently, carelessly and unlawfully disclose, give out and publish, and were negligently, carelessly and unlawfully disclosing, giving out and [26] publishing private records and affairs to said competitive banks, to wit, The United States National Bank and the First National Bank, and to the directors of them the said competitive banks in the city of Portland in such way and manner as to expose, publish, announce and disclose all of the internal affairs, the loans and discounts, the transactions had and held of The Northwestern National Bank so that in the months of February and March, 1927, before said bank disclosed it, it became and was by said acts the object of suspicion, rumor and belief, giving rise to that want of confidence and there came about a want of confidence from said cause in the public mind that impaired the credit, impaired the standing and impaired the worth and facilities of said bank as a banking association, although if said directors had done and performed their full duty to said bank and its shareholders as required by the Bank Examiner and Comptroller and had lived up to the promises that they had made, no consequence would have befallen said banking business, and this complainant charges said directors and the aforesaid acts to be the cause of the ruin, wreck and disaster to said bank.

Par. 20. That this complainant is unable to specify with more particularity and certainty or definiteness the matters and things herein com-

plained about at this time, but prays the disclosure of, from and under the power and jurisdiction of this Court of all the facts and circumstances for that the records thereof and the transactions and papers and documents in respect thereto are in possession of the respondents and not [27] of this complainant, and each and every one of said respondents including said bank substantially know in detail and at all times knew in detail of the matters herein charged and specified.

Par. 21. That defendant bank through Mark Skinner, its vice-president, is now claiming against this complainant that certain moneys now are payable by this complainant to said bank notwithstanding the wrong and injustice done to complainant by said bank and by its said directors aforesaid, and they and said bank and said Skinner are threatening and intending to enforce against complainant payment of said moneys claimed payable, but if an accounting were had between said bank, said directors and complainant, it would and will be found that there is more in right, equity and justice payable to complainant than to any or either of the respondents herein; and that upon such accounting it would be found and appear that said respondents ought of right, justice and equity pay all such amounts whatever as were wholly lost to shareholders of said bank including this complainant by their actions and conduct aforesaid over and above any just credit or offset whatever, and that against complainant there is no sum or amount payable to said bank or said directors for said bank or themselves

whatever for that complainant signed no waivers or agreements or ever became in any way a party to the doings of said respondents or gave any consent or assent whatever thereto. [28]

Par. 22. This complainant further charges that the accounts in respect of the above-mentioned transactions and dealings are still open and unsettled and that if the accounts between complainant and respondents were properly taken a considerable balance would be coming from the respondents to your complainant and that said accounts or accounting cannot be properly had or taken in any other court but this wherein the respondents can make a full and true discovery and disclosure of and concerning all and singularly the transactions and matters aforesaid, so that an accounting may be taken by and under the direction and decree of this Honorable Court of all dealings and transactions between this complainant and the said respondents; that in equity and good conscience the respondents should not be allowed to charge complainant with any sums of money, but that on the contrary the respondents ought to be charged in equity with all benefit and advantage wrongfully derived or comprised in the losses hereinabove alleged as against this complainant and to specify and show all of the same, your complainant being ready and willing to submit if it should be found to the contrary to pay any balance that might be properly, equitably and justly by this Court in consonance of its course and practice found to be due if any if it should be over and above the amount lost to complainant

as hereinbefore alleged in the acts, doings and transactions of said respondents; that in the meantime the respondents and all of them should be restrained and enjoined by an injunction of this Honorable [29] Court from the continuance, accomplishment, execution or carrying out the wrongful and improper acts entered into and carried on as aforesaid and as herein specified and described, and from in any manner proceeding against your complainant or doing otherwise than to submit themselves to and unto this Court as by due process in equity they should account.

Par. 23. Forasmuch as said bank and said respective respondents, directors, will not call to account nor sue or prosecute for the many causes, acts and things herein complained about by or among themselves injuring said bank, or call each other to account in behalf of said bank and its shareholders and this complainant and of all other stockholders of said bank, this complainant is remediless in the premises, all things considered, and wholly without adequate or any remedy, speedy, sufficient or complete at law in this or any other court or anywhere, as now and during all of said times the above-named respective respondents are in full possession, control and domination of the remaining affairs and/or property or whatever it may be of said bank or of said association or bank and are claiming the right to continue to conduct the same agreeable to their own interests, their own resolves, and in perpetuation of the injustice, wrong, and the losses hereinbefore recited; and without the

intervention and exercise of the jurisdiction of this Honorable Court in equity according to its due and proper course and practice in such cases complainant cannot have or [30] obtain, nor can all other stockholders have or obtain any competent, complete, speedy, sufficient or adequate relief whatever, and if said respective respondents continue or are allowed to continue as they are now doing and continuing to do in the exercise of the corporate powers vested in said banking association, complainant and all other stockholders may and in all likelihood will lose their entire investment and be and become subjected to liability as hereinbefore set forth beyond and over to the aforesaid undertaking banks unless said respective respondents are restrained, enjoined and prevented from continuing their careless, neglectful, wrongful and undutiful financial career aforesaid.

WHEREFORE, complainant prays your Honors to consider and pronounce upon the premises aforesaid, to require the account to be made and stated, to restrain and enjoin the respondents from further acts, doings or proceedings by themselves, their agents, servants, attorneys or employees of and from any act whatever to the prejudice of this complainant or any other stockholder and to desist from the acts, doings and matters herein complained about or any furtherance or further acts in or about the same or in pursuance thereof and wholly to refrain and desist from any matter or thing whatever in pursuance or furtherance of the matters complained about, and that this Court hear and determine the

facts herein and decide and adjudge whether and to what extent and whom shall be held and adjudged liable and responsible for the losses and impairment sustained by complainant and all other stockholders of said bank; [31]

That the said respondents may set forth a list or schedule and description of every deed, book, account, letter, paper or writing relating to the matters aforesaid, or any of them, or wherein or whereupon there is any note, memorandum, or writing relating in any manner thereto, which now are, or ever were in their, or either and which of their, possession, or power, and may particularly describe which thereof now are in their, or either and which of their, possession or power, and may deposit the same with the Clerk of this Court for the usual purposes, and otherwise that the said respondents may account for such as are not in their possession or power;

And may it please your Honors to grant unto your orator a writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said respondents, commanding them and each of them, on a day certain and under a certain penalty, in the said writ to be inserted, personally to be and appear before your Honors in this Honorable Court, and then and there full, true and perfect answer make, to all and singular the premises, and further, to stand, to perform and abide such further orders, direction and decree therein, as to your Honors shall seem meet and shall be agreeable to equity and good conscience;

And that complainant have such further, different, other, additional and also general relief and decree as may be in accordance with the facts and proof in equity cases according to the course and practice of this Honorable Court, with costs.

CHARLES A. BURKHARDT.

CHARLES A. BURKHARDT,

Complainant.

W. C. BRISTOL.

W. C. BRISTOL,

Solicitor and Attorney. [32]

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

I, the undersigned, Charles A. Burkhardt, being first duly sworn on oath depose and say: That I am a resident and citizen of the city of Seattle, in the State of Washington; that I am the complainant named and described in the foregoing bill of complaint; that I know the contents thereof and as to all the matters of fact therein stated I believe the same to be in all respects true, and as to all matters therein stated on information and belief so far as the knowledge of this complainant in acquiring said information and belief goes or was had or is possessed, the facts so stated on information and belief are from reliable sources and true as I believe; that the matters and things set forth in said bill of complaint are largely in possession of the respondents themselves and that this complainant verily believes the matters and things set forth are

the true state of facts in every respect so far as they have come in anywise to the knowledge of this complainant, and that upon proper order of this Court if the respondents are required to disclose and answer make it will be and appear that the facts stated are in accordance with the records and transactions that are prayed to be deposited in this court as part of this bill of complaint as set forth in the prayer thereof.

CHARLES A. BURCKHARDT.

Subscribed and sworn to before me this 1st day of November, 1927.

[Seal]

L. B. BROWN,
Notary Public for Oregon.

My commission expires March 7, 1930.

Filed November 7, 1927. [33]

AND AFTERWARDS, to wit, on the 30th day of November, 1927, there was duly filed in said court, a motion of defendant Chauncey McCormick to quash service of subpoena ad respondendum and affidavit in support thereof, in words and figures as follows, to wit: [34]

[Title of Court and Cause.]

MOTION TO QUASH SERVICE OF SUBPOENA AND TO DISMISS THE SUIT AS TO THE DEFENDANT CHAUNCEY MCCORMICK.

Now comes Chauncey McCormick, named as one

of the defendants in the above-entitled suit, and enters his appearance therein specially for the purpose of this motion and not otherwise, and moves for an order setting aside the alleged service of subpoena and complaint upon this defendant and dismissing the suit as to this defendant upon the ground and for the reason that the Court has no jurisdiction and that this suit is not a suit of local nature and this defendant cannot be sued therein in the District of Oregon for that this defendant is a citizen, resident and inhabitant of the Northern District of Illinois, Eastern Division at Chicago, Illinois, and not of the District of Oregon. This motion is based upon the records and files of the [35] court in this suit and upon the affidavit of J. G. Fleck hereto attached.

CAREY & KERR and
CHARLES A. HART,

Attorneys for Defendant Chauncey McCormick
Appearing Specially for the Purpose of This
Motion. [36]

AFFIDAVIT OF J. G. FLECK.

State of Oregon,
County of Multnomah,—ss.

I, J. G. Fleck, being first duly sworn, on oath, say that I know Chauncey McCormick named as one of the defendants in the above-entitled suit and have been well acquainted with him for several years past. I know that he resides in the city of Chicago, Illinois, and is a citizen of that state. He

has never resided within the district or state of Oregon and is not a citizen of that state.

J. G. FLECK.

Subscribed and sworn to before me this 30th day of November, 1927.

[Notarial Seal]

PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931. [37]

District of Oregon,
County of Multnomah,—ss.

Due service of the within motion is hereby accepted in Multnomah County, Oregon, this — day of November, 1927, by receiving a copy thereof, duly certified to as such by Charles H. Carey, of attorneys for defendants.

W. C. BRISTOL,
By F. E. GRIGSBY,
Attorney for Plaintiff.

Filed November 30, 1927. [38]

AND AFTERWARDS, to wit, on the 17th day of December, 1927, there was duly filed in said court, an answer of defendants, Northwestern National Bank, A. D. Charlton, E. S. Collins, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price and James F. Twohy, in words and figures as follows, to wit: [39]

[Title of Court and Cause.]

ANSWER OF DEFENDANTS, THE NORTHWESTERN NATIONAL BANK, A. D. CHARLTON, E. S. COLLINS, NATT McDUGALL, FREDERICK F. PITTOCK, MARK SKINNER, CHARLES H. STEWART, O. L. PRICE and JAMES F. TWOHY.

Now come the defendants, The Northwestern National Bank, A. D. Charlton, E. S. Collins, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price and James F. Twohy, and each severally and not jointly answering the bill of complaint herein, do say:

1.

These defendants admit that complainant, Charles A. Burckhardt, is a citizen and resident of the State of Washington.

Defendant Chauncey McCormick is a resident and citizen of the State of Illinois.

Defendant The Northwestern National Bank is a national banking association organized under the banking laws of the United States and doing business in the City of Portland, Oregon. [40]

Defendants O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metschan, Frederick F. Pittock, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James F. Twohy are and for a number of years last past have been directors of defendant The Northwestern National Bank, and each was and is a citizen and resident of Oregon.

Defendant Charles A. Morden is a citizen and resident of Oregon, and he was at one time a director of defendant The Northwestern National Bank.

It is true that defendants O. L. Price and Charles A. Morden are trustees under the last will and testament of Henry L. Pittock, deceased, and that defendant Charles A. Morden is an officer of Oregonian Publishing Company, a corporation, but these defendants aver that neither of said facts is in any respect pertinent or material to any issue herein. These defendants believe that the reference to said facts in complainant's bill is for some ulterior purpose and constitutes impertinence and these defendants pray that it be stricken from the bill.

Defendant Emery Olmstead was, prior to March 1, 1927, president and a director of defendant Bank. On that day he was succeeded as such president by defendant O. L. Price, who theretofore had been chairman of the board of directors of defendant Bank.

2.

These defendants are unable to determine from the bill of complaint herein, what amount, if any, is involved in this suit; and they leave complainant to his proof of the allegation that a sum in excess of \$3,000.00 is involved. [41]

3.

These defendants are unable to determine from the bill of complaint herein whether the banking statutes referred to in paragraph 3 of the bill are,

as there asserted, a part of and involved with the subject matter of this suit, and leave complainant to his proof of that allegation.

4.

It is not the fact that any wrongs have been committed against the defendant Bank for which these defendants, who are directors, have at any time been unwilling to seek redress. On the contrary, these defendants, and each of them, at all times have been ready and willing, and now are ready and willing to sue and to call to account any and all persons or parties in any manner responsible for wrongs to defendant Bank.

It is not the fact that before the filing of the bill of complaint herein any demand was made upon defendant Bank or upon these individual defendants as its directors, to correct or right the matters referred to as wrongs in the bill of complaint; on the contrary, neither complainant, nor any other stockholder of defendant Bank has at any time made any complaint, charge, or statement to defendant Bank or any of its directors, that any such alleged wrongs had been suffered; nor has complainant or any other stockholder ever demanded or requested that any step of any kind be taken to redress such supposed wrongs or to enforce any duties or liabilities of these individual defendants as directors of defendant Bank.

Complainant is, and for a number of years last past has been, a stockholder of defendant Bank, but these defendants aver that complainant has at all times enjoyed each and all of the rights vested in

him as stockholder. The allegations [42] that these individual defendants through majority control of stock were adverse or antagonistic to complainant, or any other stockholder, and were or are attempting through such control to carry out a plan to injure defendant Bank and its minority stockholders, and each and all of the statements and insinuations of the last subparagraph of Paragraph 4 of the bill of complaint, are without any foundation in fact and are wholly false and untrue.

5.

These defendants deny that at any time in the entire history of defendant Bank there ever existed any such combination between these individual defendants for the control of the stock of defendant Bank as is alleged in Paragraph 5 of the bill of complaint. It is true that the Estate of Henry L. Pittock, of which defendants O. L. Price and Charles A. Morden are trustees, is and for several years last past has been the owner of 7,696 shares out of the total 20,000 shares of stock outstanding, and that defendant O. L. Price individually owns 290 shares and that other individuals and corporations own and hold shares of stock substantially to the number stated in Paragraph 5 of the bill of complaint, except that defendant Charles A. Morden has not been the owner of any shares of stock in defendant Bank since the year 1922. But no combination or confederation for the domination through control of a majority of the stock of defendant Bank has ever existed between these individual defendants or any of them, or between them

or any of them and Edgar B. Piper or the Miami Corporation or any other stockholder. The allegations of Paragraph 5 of the bill of complaint with respect to such [43] combination and control are without foundation in fact and are wholly false and untrue.

6.

Complainant, Charles A. Burckhardt, became a stockholder of defendant Bank on July 29, 1918, by the acquisition of 250 shares.

The allegations of Paragraph 6 of the bill of complaint to the effect that representations were made to induce complainant to acquire stock in defendant Bank are not pertinent or material to any issue herein, and these defendants pray that these allegations may be stricken from the bill of complaint. If an answer thereto be required, these defendants say that none of them solicited complainant to acquire stock in defendant Bank, or made any representation to complainant, of the kind alleged, or otherwise, to induce him to become a stockholder.

7.

The directors of defendant Bank, including these individual defendants, took the oath of office prescribed by law before entering upon the performance of their duties as such directors; and these individual defendants do severally say that they have in no manner violated said oath of office but that on the contrary they have faithfully and honestly assumed and performed the duties and obligations of their offices as such directors respectively.

8.

It is not the fact that Henry L. Pittock in his lifetime, and the trustees of his estate after his death, and any other persons or interests identified with them, dominated or [44] controlled defendant Bank from its organization down to March 29, 1927, or at any time. No such combination for control ever existed, as these defendants have pointed out in their answer to Paragraph 5 of the bill of complaint. Henry L. Pittock in his lifetime, and the trustees of his estate after his death, at no time have exercised or attempted to exercise in and about the affairs of defendant Bank any other or greater rights than those lawfully vested in them as owners of stock of defendant Bank.

9.

Increases of capital and surplus of defendant Bank were made in substantially the amounts and at about the times stated in Paragraph 9 of the bill of complaint. It is true also, although the fact is not pertinent or material to any issue herein, that at the time the capital was increased to \$2,000,000 in 1922, the stockholders of defendant Bank, in order to strengthen its position and to offset inevitable and unavoidable losses due to the sudden deflation of values following the termination of the World War, also voluntarily paid in the sum of \$500,000, \$350,000 of which was credited to the earnings account, the remainder, \$150,000, going to surplus, thereby increasing the surplus account from \$250,000 to \$400,000.

10.

These defendants are unable to determine the exact nature of the charge made against them in Paragraph 10 of the bill of complaint. They deny specifically that they or any of them in any manner or to any extent whatsoever, caused, required or directed to be lost the sums listed in said paragraph [45] or any sum, or any assets of said Bank.

Each of the persons and corporations listed in said paragraph is indebted to defendant Bank and in some instances a portion of such indebtedness has been charged to profit and loss. But in each case, excepting the case of McCormick Lumber Co., the indebtedness is the result of inability on the part of the borrowers to repay when due loans made in the ordinary course of business at times and under circumstances such that these individual defendants and the officers of defendant Bank were in no manner at fault in the extension of credit. In large part these loans were made prior to the year 1920, to borrowers then financially responsible and in most instances supported by collateral entirely adequate at the time in value, and the inability of the borrowers to repay the loans when due resulted from the sudden and unexpected drop in merchandise and other values following the cessation of the World War. Since that time the officers of defendant Bank have been active and diligent in their efforts to collect said loans and substantial recoveries have been made and are still being made.

All loans made by defendant Bank to McCormick Lumber Company have been paid in full. The in-

debtedness now owing by said Lumber Company is the result of the acceptance by defendant Bank for credit to the account of the McCormick Lumber Company of certain checks and drafts, payment of which was later refused by the drawers. The acceptance of these checks and drafts for immediate credit was without the knowledge of any of these individual defendants and none of said defendants had any notice thereof or any opportunity whatever of preventing such crediting of checks and drafts, and none of [46] said defendants is in any respect chargeable with negligence or fault in respect thereto.

It is not a fact that defendants in 1925 or at any time failed, neglected or refused to comply with any direction of any Bank Examiner or other representative of the Comptroller of the Currency to reduce the line of credit granted to J. E. Wheeler or to any companies in which he was interested. All present indebtedness due from said Wheeler, Wheeler Timber Company, Wheeler Estate and Telegram Publishing Company, is the result of loans made several years prior to 1925 upon a sufficient showing of financial worth and supported in large part by adequate guaranties and/or collateral. Renewals of said loans were made from time to time when the borrowers were unable to pay at maturity, but it is not true that the Examiner of National Banks requested the so-called Wheeler lines to be reduced because too much was loaned to one person, and such renewals were never granted to disobedience to any direction or against

the advice of any Bank Examiner or other representative of the Comptroller of the Currency.

Further answering Paragraph 10 of the bill of complaint these defendants say that the loans made to the persons and corporations listed in Paragraph 10 of the bill of complaint resulted from extensions of credit granted to said borrowers prior to the year 1923. At each annual meeting of the stockholders of defendant Bank from the year 1919 down to and including the year 1927, with the exception of the year 1924, complainant was represented in person or by proxy, and at each of such annual meetings reports showing the acts of the directors for the years preceding the respective annual meetings were placed before the meeting and resolutions duly and regularly [47] adopted ratifying and approving the acts of the directors in such preceding years respectively. At the annual meeting for the year 1920, held January 30 in that year, Complainant attended in person and personally offered the resolution which was thereupon adopted approving the acts of the directors in the preceding year. Complainant therefore should be and is estopped from making any complaint of the actions of these individual defendants, who were directors, in extending credit to the persons and corporations listed in Paragraph 10 of the bill of complaint.

Further answering Paragraph 10 of the bill of complaint the defendants E. S. Collins, James Twohy, Charles H. Stewart and Mark Skinner severally say:

Defendant Collins became a director of defendant

Bank on September 25, 1923; defendant Twohy on August 31, 1922; defendant Stewart on June 20, 1922, and defendant Skinner on January 10, 1922. If complainant's bill is intended as a charge that losses were made in the amounts stated in Paragraph 10 because of improper loans, these last-named defendants say that they were not directors when the loans were made and the loss resulting therefrom, if any, accrued before they assumed office; and since their respective assumption of office no act or omission on their part or on the part of any of them has increased or affected the amount of loss, if any, attributable to such loans.

11.

The allegations of Paragraph 11 of the bill of complaint are wholly untrue. Defendant Charles A. Morden was elected a director of defendant Bank on January 11, 1921, and [48] served as such director until August 31, 1922, when he resigned, having sold his stock for a valuable consideration to defendant Mark Skinner. Defendant Morden served as a member of the Examining Committee from the time of his election as a director until the end of the year 1921 only. During this period the Examining Committee made regular reports to the directors and such reports were regularly spread upon the minutes of the meetings of the board of directors. But it is not the fact that said reports, or any of them, showed any condition of wrong administration or impending losses or any condition in the affairs of the defendant Bank requiring action by the directors to avoid loss. Dur-

ing this period and at all times the directors met regularly and carefully reviewed the reports of the Examining Committee and took such action in respect thereto as in the exercise of sound judgment seemed necessary. No reports were suppressed and nothing in the condition of the Bank as ever kept from the stockholders, and it is wholly untrue that defendant Morden resigned as director because of any such undisclosed condition in the affairs of the Bank.

It is wholly false and untrue that at any time during the existence of the defendant Bank its Examining Committee made any report which would show a favorable but incorrect condition of the Bank or any report which showed any condition of said Bank except the true condition thereof as said Examining Committee found and believed to exist and attempted to disclose by its reports. All reports of the Examining Committee were made to the board of directors of the Bank only and were thereupon placed with the minutes of the meetings of the directors, at which said reports were [49] received, and thereupon all of said reports became available for examination by all stockholders of the Bank and by the District Bank Examiner and any other representative of the Comptroller of Currency. All reports of the Examining Committee remained at all times and now remain in the minutes of the directors' meetings and were in fact read and their contents known to and understood by the District Bank Examiner, and could have been read and their contents known to and understood by

any stockholder of the Bank or any representative of the Comptroller of the Currency.

It is untrue that the Examining Committee ever made a confidential, private or secret report, or any report, to Mark Skinner, vice-president, or to other officers or directors of the Bank, which showed any condition different from that disclosed by any report made to the District Bank Examiner, or to the Comptroller of the Currency, but whether the Comptroller of the Currency in person received copies of all reports made by the Examining Committee to the board of directors, defendants cannot say, although they aver that copies of such reports of the Examining Committee were sent to the Comptroller of the Currency whenever requested.

12.

These defendants are unable to determine what is attempted to be alleged in Paragraph 12 of the bill of complaint. Pursuant to the requirements of the by-laws of defendant Bank there was at all times an executive committee consisting of a majority of the board of directors, which committee met weekly and passed on applications for credit and kept fully informed in regard to the purchase and sales of securities, loans on collateral, discounts and other business activities [50] of defendant Bank. Regular monthly meetings of the board of directors were held at which the minutes of meetings of the executive committee were regularly read and submitted for approval.

There was also maintained at all times, in accordance with the by-laws of defendant Bank, an

examining committee whose duty it was to investigate the affairs and business of defendant Bank twice in each year, and said committee during all of said times carefully investigated the affairs of defendant Bank and reported the results of such investigations to the board of directors; and these defendants allege that throughout the period mentioned in the complaint every effort was made by these defendants to supervise and manage the affairs and business of defendant Bank faithfully and honestly.

On October 22, 1926, the Chief National Bank Examiner of the Twelfth Federal Reserve District advised defendant Bank by letter of the result of an examination of its assets and stated that it would be necessary to provide additional funds to the amount of not less than \$1,000,000 in order that nonproducing assets in this total could be eliminated. Thereafter these defendants, acting with the approval of said Bank Examiner, undertook the organization of a corporation capitalized at \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank nonpurchasing or "frozen" assets, as described in the report of said Bank Examiner. These defendants made every effort to consummate said plan but were unable to do so. But thereafter, following a further examination by said Bank Examiner, these [51] defendants determined that it was necessary to levy a full 100% assessment upon

the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

The allegation that acts or omissions of these individual defendants as directors from the time of the last increase in capital stock down to March 30, 1927, caused the defendant Bank to go into liquidation is without foundation in fact. Except as hereinabove in this answer to Paragraph 12 admitted, these defendants specifically deny each and every allegation of said Paragraph 12.

13.

It is not the fact that at any time these individual defendants as directors of defendant Bank suppressed or concealed from stockholders any information regarding the condition of the Bank and it is not true that stockholders' meetings were in any respect manipulated or controlled. No such combination among stockholders as is alleged in Paragraph 13 of the bill existed or ever was exercised to control any action at stockholders' meetings, and during the entire history of defendant Bank the rights of minority stockholders in and about the administration of the affairs of defendant Bank

were never in any degree impaired or restricted.
[52]

14.

The allegations of Paragraph 14 of the bill of complaint are entirely incorrect and untrue. None of these defendants participated in any way in the acquisition of stock in defendant Bank by J. E. Wheeler, or aided him in any particular in securing credit for, or in the financing of his purchase of said stock. On the contrary, said purchase by J. E. Wheeler of stock theretofore owned by Guy M. Standifer, L. B. Menefee and R. V. Jones was consummated without the knowledge or consent of any of these defendants.

15.

The allegations of Paragraph 15 of the bill of complaint are wholly incorrect and untrue. These individual defendants were fully aware in 1925 and 1926 of the extent to which the assets of defendant Bank were nonproductive or frozen, and at all times during said years, and during the preceding years, had striven faithfully and honestly to convert said frozen assets into bankable productive commercial paper.

In June, 1926, a committee appointed by the directors, consisting of defendants Price, Metschan and Stewart, conferred with the Comptroller of the Currency and requested him to have an examination made of the condition of the Bank so that with the approval of the Comptroller, or his representative, steps could be taken for the elimination of all nonproductive or frozen assets. Thereafter

such an examination was made and other conferences were held with the Chief Bank Examiner of the Twelfth Federal Reserve District and the Comptroller, and thereafter and in December, 1926, with the approval of the Chief Bank Examiner and the Comptroller, defendant Bank and its [53] directors determined to organize a corporation with a capital of \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank non-producing or frozen assets as designated in the reports of the Chief Bank Examiner.

These defendants made every effort to consummate said plan but were unable to do so; and when it was ascertained that said plan could not be successfully carried through, these defendants determined that it would be necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

These defendants at no time failed or refused to comply with any direction or request of the Comp-

troller of the Currency. On the contrary, they at all times worked in co-operation with him, and he with them, in the effort to formulate and carry out a plan for the elimination of all nonproducing or frozen assets.

It is the fact that during the fall of 1926, or into the year 1927, as alleged in Paragraph 15 of the bill of complaint, any further loans were made or credit extended to J. E. Wheeler, either directly or upon his endorsement. On [54] the contrary, these individual defendants, for a long time prior thereto, were endeavoring in every way within their power as directors, to secure the retirement, in part at least, of the indebtedness owing by said J. E. Wheeler, and the companies in which he was interested.

No loans in excess of the amounts permitted by law were ever made by these defendants to J. E. Wheeler or to companies in which he was interested or to any other persons, firms, or corporations.

16.

The allegations of Paragraph 16 of the bill of complaint are wholly incorrect and untrue. Defendant Bank was never in a condition such that it was unable to pay its depositors upon demand until on March 28, 1927, a run upon the Bank occurred. Whereupon, defendant Bank, in order to insure full and immediate payment of all depositors on demand, entered into a contract with the United States National Bank and First National Bank of Portland under the terms of which said two Banks

agreed to advance and loan to defendant Bank all moneys necessary to enable defendant Bank to pay its depositors on demand, defendant Bank pledging to said two Banks all of its assets as collateral to said loan and in addition certain of its stockholders, including the Estate of Henry L. Pittock, individually guaranteeing repayment of said loan; and thereupon defendant Bank began liquidation of its assets in order to effect the payment of said loan to said two Banks.

Defendant O. L. Price was elected president of defendant Bank on March 1, 1927, but it is not the fact that thereafter the management of the Bank was left entirely to defendant Price, or that these individual defendants [55] in any respect, or to any degree, delegated any of their duties as directors to the president of the Bank, or to anyone else. And it is not true that in February, 1927, or in March, 1927, or at any other time, these individual defendants, as directors, by the adoption of any plans or proposals before them could have avoided the condition which made necessary in their judgment the agreement with the United States National Bank and First National Bank of Portland and the liquidation as hereinabove described. As to the supposed plans or proposals referred to in Paragraph 16 of the bill of complaint, these defendants say:

First. No plan for the reorganization of defendant Bank as a state bank and trust company was ever developed or perfected so that it was possible of accomplishment. Such a plan was at one

time suggested during the conferences with the Chief Bank Examiner hereinabove referred to, but it was rejected by defendant Bank and the Chief Bank Examiner in favor of the plan for transferring the frozen assets to a corporation to be organized with capital furnished by the stockholders of defendant Bank.

Second. So far as these defendants have ever been advised, J. E. Wheeler was never willing to turn over his assets for the protection of defendant Bank, or for the benefit of his creditors, until long after the closing of defendant Bank, although at one time said Wheeler made an indefinite proposal for an assignment provided defendant Bank would advance large additional sums of money. Certainly none of these defendants deterred or in any way prevented or dissuaded said Wheeler from any such transfer of assets, but, on the contrary, were at all times anxious and willing and often demanded that said Wheeler should liquidate his property and assets in any way possible so that his indebtedness to defendant Bank might be paid. [56]

Further answering Paragraph 16 of the bill of complaint these defendants admit that the officers and directors of defendant Bank caused to be published, on March 2, 1927, the announcement quoted on page 22 of the bill, but it is not true that the directors of the Bank left the sole management and control to defendant Price or in any manner abdicated their responsibilities as directors. Nor is it true that the run on the Bank, which occurred al-

most four weeks later, was permitted by defendant Price and these individual defendants as directors of the Bank, or any of them, or that they refrained from doing everything in their power to prevent it.

The announcement so published on March 2, 1927, resulted from the fact that at that time the directors of defendant Bank having been unable to carry through the plan for the organization of a corporation to take over non-producing or frozen assets, decided that with the consent and approval of the Chief Bank Examiner, an assessment of 100% upon the capital stock of the Bank should be made, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to defendant Bank of the full amount to accrue from said 100% assessment.

17.

It is not the fact that any secret or undisclosed agreements have been made as alleged in Paragraph 17 of the bill of complaint. The agreements said to have been placed [57] in the custody of James B. Kerr are the agreements already referred to in this answer between defendant Bank and its guaranteeing stockholders on the one hand and the United States National Bank and the First National Bank of Portland on the other. Said agreements were

not kept secret, but, on the contrary, were presented to and duly ratified at a meeting of the stockholders of defendant Bank held May 3, 1927, and said agreements were thereupon spread upon the minutes of the stockholders' meeting of May 3, 1927.

18.

It is not the fact that the directors of defendant Bank made or caused losses to said Bank in two million dollars, or in any sum, nor is it the fact that the directors impaired the capital stock of the Bank or wilfully or intentionally depreciated or destroyed any investment in the stock of the Bank.

19.

It is not the fact that these defendants gave out or published improperly or carelessly or negligently or unlawfully any information about the internal affairs of the Bank that in any way caused or aided in bringing about the run upon the Bank on March 28, 1927. It is true that negotiations were had on one or more occasions for the sale and transfer to another bank of the assets, business, and goodwill of defendant Bank, and that the prospective purchaser was given such information about the properties offered for sale as was necessary to the negotiations. But the directors conducting such negotiations acted honestly and faithfully in the interest of defendant Bank and its stockholders, and at no time did they improperly disclose or make public the private affairs [58] of the Bank or give out any information which in any way worked to the disadvantage of the Bank.

20.

These defendants are ready and willing to disclose any and all facts in their possession which may be relevant or pertinent to any issue herein. But all books and records of defendant Bank are, and at all times have been, open to and available for inspection by the stockholders of defendant Bank.

21.

These defendants admit that defendant Bank is now claiming that complainant is indebted to defendant Bank. Except as thus admitted these defendants specifically deny each and every allegation of Paragraph 21 of the bill of complaint.

Complainant is indebted to defendant Bank in the sum of \$30,000, with accrued and accruing interest. For a number of years prior to July 25, 1927, complainant was indebted to defendant Bank in the sum of \$40,000, and on July 25, 1927, the indebtedness was reduced to \$30,000 by the payment of \$10,000 on account. Defendant Bank has made many demands upon complainant for the payment of this indebtedness but excepting for the payment of \$10,000 so made on July 25, 1927, the principal of said loan has not been reduced but complainant has insisted upon renewals of his notes as they respectively matured. In the report of the examination made by the Chief National Bank Examiner of the Twelfth Federal Reserve District on October 22, 1926, referred to hereinabove in the answer to Paragraph 12 of the bill of complaint, the indebtedness due defendant Bank from complainant was listed as a nonbankable [59] item, and defendant Bank

at that time, and before and after that time, constantly demanded of complainant that this indebtedness be paid. These defendants say that nothing in any of the matters attempted to be set out in complainant's bill justifies complainant's failure to pay his indebtedness to defendant Bank, but that defendant Bank should be permitted, notwithstanding complainant's demands herein, to enforce immediate payment by complainant of the principal and interest of his debt.

22.

The answer made by these defendants to Paragraph 21 of the bill of complaint sufficiently answers Paragraph 22 of the bill. No accounting of any kind is due complainant from defendant Bank or from any of these defendants, and complainant should not be permitted to use the demands or claims asserted in his bill as an excuse for withholding payment of his overdue obligation to defendant Bank.

23.

For their answer to Paragraph 23 of the bill of complaint these defendants say that the bill is without equity. These individual defendants and defendant Bank have not at any time refrained, and are not now refraining, from any necessary or proper step for the redress of any wrong done to defendant Bank, but nothing in any of the matters attempted to be stated in the bill justifies the charge that any director has committed any wrong toward defendant Bank, and no stockholder, prior to the institution of this suit, has ever made any complaint

to defendant Bank, or its directors, of any such wrong, nor has any demand ever been made for the redress of any such supposed wrong. [60]

The control which these individual defendants now have over the affairs and property of defendant Bank is that only which these individual defendants as directors and officers of defendant Bank should properly and lawfully exercise, and it is, and at all times has been, in subordination to the rights of the stockholders under the articles of incorporation and by-laws duly adopted.

WHEREFORE, These defendants, having fully answered the bill of complaint herein, pray that they be hence dismissed with costs and their disbursements herein taxed against complainant.

CHARLES H. CAREY,
JAMES B. KERR,
CHARLES A. HART,
CHARLES E. McCULLOCH,

Attorneys for the Above-named Answering Defendants.

CAREY AND KERR,

Of Counsel.

M. A. ZOLLINGER,

Of Counsel for Defendant E. S. Collins.

[61]

State of Oregon,

County of Multnomah,—ss.

I, O. L. Price, make solemn oath and say, I am president of The Northwestern National Bank, a corporation, one of the above-named defendants; so much of the foregoing answer as concerns my own

acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

O. L. PRICE.

Subscribed and sworn to before me this 15th day of December, 1927.

[Notarial Seal] PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931.

State of Oregon,
County of Multnomah,—ss.

I, A. D. Charlton, make solemn oath and say: I am one of the above-named defendants; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

A. D. CHARLTON.

Subscribed and sworn to before me this 15th day of December, 1927.

[Notarial Seal] PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931.

State of Oregon,
County of Multnomah,—ss.

I, E. S. Collins, make solemn oath and say: I am one of the above-named defendants; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge

and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

E. S. COLLINS.

Subscribed and sworn to before me this 16th day of December, 1927.

[Notarial Seal]

PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931. [62]

State of Oregon,
County of Multnomah,—ss.

I, Natt McDougall, make solemn oath and say: I am one of the above-named defendants; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

NATT McDOUGALL.

Subscribed and sworn to before me this 16th day of December, 1927.

[Notarial Seal]

PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931.

State of Oregon,
County of Multnomah,—ss.

I, Frederick F. Pittock, make solemn oath and say: I am one of the above-named defendants; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or

deeds of any other person or persons I believe to be true.

FREDERICK F. PITTOCK,

Subscribed and sworn to before me this 15th day of December, 1927.

[Notarial Seal]

I. F. PHIPPS,

Notary Public for Oregon.

My commission expires Dec. 21, 1928.

State of Oregon,

County of Multnomah,—ss.

I, Mark Skinner, make solemn oath and say: I am one of the above-named defendants; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

MARK SKINNER.

Subscribed and sworn to before me this 15th day of December, 1927.

[Notarial Seal]

I. F. PHIPPS,

Notary Public for Oregon.

My commission expires Dec. 21, 1928. [63]

State of Oregon,

County of Multnomah,—ss.

I, Charles H. Stewart, make solemn oath and say: I am one of the above-named defendants; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

CHARLES H. STEWART.

Subscribed and sworn to before me this 15th day of December, 1927.

[Notarial Seal]

PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931.

State of Oregon,
County of Multnomah,—ss.

I, O. L. Price, make solemn oath and say: I am one of the above-named defendants; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

O. L. PRICE.

Subscribed and sworn to before me this 15th day of December, 1927.

[Notarial Seal]

PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931.

State of Oregon,
County of Multnomah,—ss.

I, Charles A. Hart, make solemn oath and say: I am attorney for James F. Twohy, one of the above-named defendants; I have read and know the contents of the foregoing answer made on behalf of said defendant and I believe it to be true; and I make this verification on behalf of the defendant James F. Twohy because said defendant is absent from the District of Oregon, wherein this suit is brought.

CHARLES A. HART.

Subscribed and sworn to before me this 16th day of December, 1927.

[Notarial Seal] PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931. [64]

District of Oregon,
County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 17th day of December, 1927, by receiving a copy thereof, duly certified to as such by Charles A. Hart, of attorneys for within named defendants.

W. C. BRISTOL,
Attorney for Plaintiff.

Filed December 17, 1927. [65]

AND AFTERWARDS, to wit, on the 19th day of December, 1927, there was duly filed in said court, an answer of defendant, Charles K. Spaulding, in words and figures as follows, to wit: [66]

[Title of Court and Cause.]

ANSWER OF DEFENDANT CHARLES K.
SPAULDING.

Now comes the defendant Charles K. Spaulding, and answering the bill of complaint herein says:

I.

This answering defendant admits that complain-

ant, Charles A. Burckhardt is a citizen and resident of the State of Washington.

Defendant Chauncey McCormick is a resident and citizen of the State of Illinois.

Defendant The Northwestern National Bank is a national banking association organized under the banking laws of the United States and does business in the city of Portland, Oregon.

Defendants O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metschan, Frederick F. Pittock, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James F. Twohy are and for a number of years last past have been directors of defendant The Northwestern National Bank, and each was and is a citizen and resident of Oregon.

Defendant Charles A. Morden is a citizen and resident of Oregon and was at one time a director of defendant The Northwestern National [67] Bank.

It is true that defendants O. L. Price and Charles A. Morden are trustees under the last will and testament of Henry L. Pittock, deceased, and that defendant Charles A. Morden is an officer of the Oregonian Publishing Company, a corporation, but this defendant avers that neither of said facts is in any respect pertinent or material to any issue herein. This defendant believes that the reference to said facts in complainant's bill is for some ulterior purpose and constitutes impertinence.

Defendant Emery Olmstead was, prior to March 1, 1927, president and a director of said bank. On

that day he was succeeded as such president by defendant O. L. Price, who theretofore had been chairman of the board of directors of defendant bank.

2.

This defendant is unable to determine from the bill of complaint herein, what amount, if any, is involved in this suit; and he leaves complainant to his proof of the allegation that a sum in excess of \$3,000.00 is involved.

3.

This defendant is unable to determine from the bill of complaint herein whether the banking statutes referred to in Paragraph 3 of the bill are, as there asserted, a part of and involved with the subject matter of this suit, and denies that the laws referred to in Paragraph 3 of the bill are a part of or involved in this suit.

4.

It is not the fact that any wrongs have been committed against the defendant Bank for which the defendants who are and were directors have at any time been unwilling to seek redress. On the contrary, the defendants who are or were directors, and each of them, at all times have been ready and willing, and are now ready and willing to sue and [68] to call to account any and all persons or parties in any manner responsible for wrongs to defendant Bank.

It is not the fact that before the filing of the bill of complaint herein any demand was made upon

defendant Bank or upon the individual defendants as its directors, to correct or right the matters referred to as wrongs in the bill of complaint; on the contrary, neither complainant, nor any other stockholder of defendant Bank has at any time made any complaint, charge, or statement to defendant Bank or any of its directors, that any such alleged wrongs had been suffered; nor has complainant or any other stockholder ever demanded or requested that any step or any kind be taken to redress such supposed wrongs or to enforce any duties or liabilities of the individual defendants as directors of defendant Bank or otherwise.

Complainant is, and for a number of years last past has been, a stockholder of defendant Bank, but this defendant avers that complainant has at all times enjoyed each and all of the rights vested in him as stockholder. The allegations that the individual defendants through majority control of stock were or are adverse or antagonistic to complainant, or any other stockholder, or were or are attempting through such control to carry out a plan to injure defendant Bank and its minority stockholders, and each and all of the statements and insinuations of the last subparagraph of Paragraph 4 of the bill of complaint, are without any foundation in fact and are untrue and are denied.

5.

This defendant denies that at any time in the entire history of defendant Bank there ever existed any such combination between the individual de-

fendants for the control of the stock of defendant Bank as is alleged in Paragraph 5 of the bill of complaint, or otherwise or at all. It is true that the Estate of Henry L. Pittock, of which [69] defendants O. L. Price and Charles A. Morden are trustees, is and for several years last past has been the owner of 7696 shares out of the total 20,000 shares of stock outstanding, and that defendant O. L. Price individually owns 290 shares and that other individuals and corporations own and hold shares of stock substantially to the number stated in Paragraph 5 of the blil of complaint, except that defendant Charles A. Morden has not been the owner of any shares of stock in defendant Bank since the year 1922. But no combination or confederation for the domination through control of a majority of the stock of defendant Bank has ever existed between this defendant and any other director or stockholder.

As they have reference to this defendant the allegations of Paragraph 5 of the bill of complaint with respect to such combination and control are without foundation in fact and are untrue and are denied.

6.

Complainant, Charles A. Burckhardt, became a stockholder of defendant bank on July 29, 1918, by the acquisition of 250 shares.

The allegations of Paragraph 6 of the bill of complaint to the effect that representations were made to induce complainant to acquire stock in defendant Bank are not pertinent or material to any issue

herein. If an answer thereto be required, this defendant says that he did not solicit complainant to acquire stock in defendant Bank, or make any representation to complainant, of the kind alleged, or otherwise, to induce him to become a stockholder.

7.

The directors of defendant Bank, including this defendant, took the oath of office prescribed by law before entering upon the performance of their duties as such directors; and this defendant says that he has in no manner violated said oath of office but on the contrary he has faithfully and honestly assumed and performed the duties and obligations of his office as such director. [70]

8.

It is not the fact that Henry L. Pittock in his lifetime or the trustees of his estate after his death, or any other persons or interests identified with them, dominated or controlled defendant Bank from its organization down to March 29, 1927, or at any time. No such combination for control ever existed, as this defendant has pointed out in his answer to Paragraph 5 of the bill of complaint. Henry L. Pittock in his lifetime, and the trustees of his estate after his death, at no time have exercised or attempted to exercise in or about the affairs of defendant Bank any other or greater rights than those lawfully vested in them as owners of stock of defendant Bank. This defendant avers that during all the time he was a director of the defendant Bank that he was independent of the

domination or control of any person, persons, or corporation, and that at all of such times he acted individually as he deemed to be for the best interests of the Bank and all of its stockholders.

9.

Increases of capital and surplus of defendant Bank were made in substantially the amounts and at about the times stated in Paragraph 9 of the bill of complaint. It is true also, although the fact is not pertinent or material to any issue herein, that at the time the capital was increased to \$2,000,000 in 1922, the stockholders of defendant Bank, in order to strengthen its position and to offset inevitable and unavoidable losses due to the sudden deflation of values following the termination of the World War, also voluntarily paid in the sum of \$500,000, \$350.00 of which was credited to the earnings account, the remainder, \$150,000, going to surplus, thereby increasing the surplus account from \$250,000 to \$400,000.

10.

This defendant is unable to determine the nature of the charge made against the defendants in Paragraph 10 of the bill of complaint. He denies specifically that he in any manner or to any extent whatsoever, [71] caused, required, or directed to be lost the sums listed in said paragraph or any sum, or any assets of said Bank.

Each of the persons and corporations listed in said Paragraph is indebted to defendant Bank and in some instances a portion of such indebtedness has

been charged to profit and loss. But in each case, excepting the case of McCormick Lumber Co., the indebtedness is the result of inability on the part of the borrowers to repay when due loans made in the ordinary course of business at times and under circumstances such that this individual defendant was in no manner at fault in the extension of credit. In large part these loans were made prior to the year 1920, to borrowers then financially responsible and in most instances supported by collateral entirely adequate at the time in value, and the inability of the borrowers to repay the loans when due resulted from the sudden and unexpected drop in merchandise and other values following the cessation of the World War. Since that time the officers of defendant Bank have been active and diligent in their effort to collect said loans and substantial recoveries have been made and are still being made thereon.

All loans made by defendant Bank to McCormick Lumber Company have been paid in full. The indebtedness now owing by said Lumber Company is the result of the acceptance by defendant Bank for credit to the account of the McCormick Lumber Company of certain checks and drafts, payment of which was later refused by the drawers. The acceptance of these checks and drafts for immediate credit was without the knowledge of this defendant and he had no notice thereof or opportunity whatever of preventing such crediting of either checks or drafts, and he is in no respect chargeable with negligence or fault in respect thereto.

It is not the fact that this defendant in 1925 or at any time failed, neglected or refused to comply with any direction from any Bank Examiner or other representative of the Comptroller of the Currency to reduce the line of credit granted to J. E. Wheeler or to [72] any companies in which he was interested. All present indebtedness due from said Wheeler, Wheeler Timber Company, Wheeler Estate, and Telegram Publishing Company, is the result of loans made several years prior to 1925 upon a sufficient showing of financial worth and supported in large part by adequate guaranties and/or collateral. Renewals of said loans were made from time to time when the borrowers were unable to pay at maturity, but it is not true that the Examiner of National Banks requested the so-called Wheeler lines to be reduced because too much was loaned to one person, and such renewals were never granted in disobedience to any direction or against the advice of any Bank Examiner or other representative of the Comptroller of the Currency.

Further answering Paragraph 10 of the bill of complaint this defendant says that the loans made to the persons and corporations listed in Paragraph 10 of the bill of complaint resulted from extensions of credit granted to said borrowers prior to the year 1923. At each annual meeting of the stockholders of defendant Bank from the year 1919 down to and including the year 1927, with the exception of the year 1924, complainant was represented in person or by proxy, and at each of such annual meetings

reports showing the acts of the directors for the years preceding the respective annual meetings were placed before the meeting and resolutions duly and regularly adopted ratifying and approving the acts of the directors in such preceding years respectively. At the annual meeting for the year 1920, held January 30, in that year, complainant attended in person and personally offered the resolution which was thereupon adopted approving the acts of the directors in the preceding year. Complainant therefore should be and is estopped from making any complaint of the actions of this defendant, who was a director, in extending credit to the persons and corporations listed in Paragraph 10 of the bill of complaint, and should be and is estopped from averring or proving the same.

Further answering Paragraph 10 of the bill of complaint, defendant [73] says, that he became a director of defendant Bank on the 31st day of August, 1922. If complainant's bill is intended as a charge that losses were made in the amounts stated in Paragraph 10 because of improper loans, this defendant says that he was not a director of the defendant Bank when the loans were made and the losses resulting therefrom, if any, accrued before he assumed office; and since his assumption of office no act or omission on his part or on the part of *any the* directors has increased or affected the amount of loss, if any, attributable to such loans.

11.

The allegations of Paragraph 11 of the bill of

complaint are untrue and are denied. Defendant Charles A. Morden was elected a director of defendant Bank on January 11, 1921, and served as such director until August 31, 1922, when he resigned, having sold his stock for a valuable consideration to the defendant Mark Skinner. Defendant Morden served as a member of the Examining Committee from the time of his election as a director until the end of the year 1921 only. The defendant Spaulding was elected and became a member of the Examining Committee on the — day of —, 1923. During this period the Examining Committee made regular reports to the directors and such reports were regularly spread upon the minutes of the meetings of the board of directors. But it is not the fact that said reports, or any of them, showed any condition of wrong administration or impending losses or any condition in the affairs of the defendant Bank requiring action by the directors to avoid loss. During this period and at all times the directors met regularly and carefully reviewed the reports of the Examining Committee and took such action in respect thereto as in the exercise of sound judgment seemed necessary. No reports were suppressed and nothing in the condition of the Bank was ever kept from the stockholders, and it is untrue that the defendant Morden resigned as director because of any such undisclosed condition [74] in the affairs of the Bank.

It is not true that at any time during the existence of the defendant Bank its Examining Committee made any report which would show a favorable

but incorrect condition of the Bank or any report which showed any condition of said Bank except the true condition thereof as said Examining Committee found and believed to exist and attempted to disclose by its reports. All reports of the Examining Committee were made to the board of directors of the Bank only and were thereupon placed with the minutes of the meetings of the directors, at which said reports were received, and thereupon all of said reports became available for examination by all of the stockholders of the Bank and by the District Bank Examiner and any other representative of the Comptroller of the Currency. All reports of the Examining Committee remained at all times and now remain in the minutes of the directors' meetings and were in fact read and their contents known to and understood by the District Bank Examiner, and could have been read and their contents known to and understood by any stockholder of the Bank or any representative of the Comptroller of the Currency.

It is untrue that the Examining Committee ever made a confidential, private or secret report, or any report, to Mark Skinner, vice-president, or to other officers or directors of the Bank, or to the directors of said Bank, which showed any condition different from that disclosed by any report made to the District Bank Examiner, or to the Comptroller of the Currency, but whether the Comptroller of the Currency in person received copies of all reports made by the Examining Committee to the board of directors, defendant cannot say, although he avers that

copies of such reports of the Examining Committee were sent to the Comptroller of the Currency whenever requested. [75]

12.

This defendant is unable to determine what is attempted to be alleged in Paragraph 12 of the bill of complaint. Pursuant to the requirements of the by-laws of defendant Bank there was at all times an executive committee consisting of a majority of the board of directors, which committee met weekly and passed on applications for credit and kept fully informed in regard to the purchase and sales of securities, loans on collateral, discounts and other business activities of defendant Bank. Regular monthly meetings of the board of directors were held at which the minutes of meetings of the executive committee were regularly read and submitted for approval.

There was also maintained at all times, in accordance with the by-laws of defendant Bank, an examining committee whose duty it was to investigate the affairs and business of defendant Bank twice in each year, and said committee during all of said times carefully investigated the affairs of defendant Bank and reported the results of such investigations to the board of directors; and this defendant alleges that throughout the period mentioned in the complaint every effort was made by him with respect to all matters coming within the scope of his office or duty as a director to supervise and manage the affairs and business of defendant Bank faithfully and honestly.

On October 22, 1926, the Chief National Bank Examiner of the Twelfth Federal Reserve District advised defendant Bank by letter of the result of an examination of its assets and stated that it would be necessary to provide additional funds to the amount of not less than \$1,000,000 in order that non-producing assets in this total could be eliminated. Thereafter this defendant, with other defendants, acting with the approval of said Bank Examiner, undertook the organization of a corporation capitalized at \$1,500,000, one-half thereof to be provided [76] by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank nonproducing or "frozen" assets, as described in the report of said Bank Examiner. Such acting defendants made every effort to consummate said plan but were unable to do so. But thereafter, following a further examination by said Bank Examiner, it was determined that it was necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

The allegation that acts or omissions of this defendant, as a director or otherwise, caused the defendant Bank to go into liquidation is untrue.

Except as hereinabove in this answer to Paragraph 12 admitted, this defendant specifically denies each and every allegation of said Paragraph 12.

13.

It is not the fact that at any time this defendant suppressed or concealed from stockholders any information regarding the condition of the Bank, and it is not true that stockholders' meetings were in any respect manipulated or controlled by this defendant or any person in combination with him. No such combination among stockholders as alleged in Paragraph 13 of the bill existed, and during the entire history of defendant Bank the rights of minority stockholders in the administration of its affairs were never in any degree impaired or restricted. [77]

14.

The allegations of Paragraph 14 of the bill of complaint are untrue. This defendant did not participate in any way in the acquisition of stock in defendant Bank by J. E. Wheeler, or aid him in any particular in securing credit for, or in the financing of his purchase of said stock. On the contrary, said purchase by J. E. Wheeler of stock theretofore owned by Guy M. Standifer, L. B. Menefee and R. V. Jones was consummated without the knowledge or consent of this defendant.

15.

The allegations of Paragraph 15 of the bill of complaint are untrue. This defendant was fully aware in 1925 and 1926 of the extent to which the assets of defendant Bank were nonproductive or frozen, and at all times during said years, and during the preceding years, had striven faithfully and honestly to convert said frozen assets into bankable productive commercial paper.

In June, 1926, a committee appointed by the directors, consisting of defendants Price, Metschan and Stewart, conferred with the Comptroller of the Currency and requested him to have an examination made of the condition of the Bank so that with the approval of the Comptroller, or his representative, steps could be taken for the elimination of all nonproductive or frozen assets. Thereafter such an examination was made and other conferences were held with the Chief Bank Examiner of the Twelfth Federal Reserve District and the Comptroller, and thereafter and in December, 1926, with the approval of the Chief Bank Examiner and the Comptroller, defendant Bank and its directors determined to organize a corporation with a capital of \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation [78] to purchase and take over from defendant Bank nonproducing or frozen assets as designated in the reports of the Chief Bank Examiner.

This defendant and other defendants made every

effort to consummate said plan but were unable to do so; and when it was ascertained that said plan could not be successfully carried through, it was determined to be necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

This defendant at no time failed or refused to comply with any direction or request of the Comptroller of the Currency. On the contrary, he at all times worked in co-operation with him, in the effort to formulate and carry out a plan for the elimination of all nonproducing or frozen assets.

It is not the fact that during 1926, or the year 1927, as alleged in Paragraph 15 of the bill of complaint, any further loans were made or credit extended to J. E. Wheeler, either directly or upon his endorsement. On the contrary, this defendant for a long time prior thereto was endeavoring in every way within his power as director, to secure the retirement, in part at least, of the indebtedness owing by said J. E. Wheeler, and the companies in which he was interested.

No loans in excess of the amounts permitted by

law were ever made by the board of directors of said Bank to J. E. Wheeler or to companies in which he was interested or to any other persons, [79] firms, or corporations.

16.

The allegations of Paragraph 16 of the bill of complaint are untrue. Defendant Bank was never in such a condition that it was unable to pay its depositors upon demand until on March 28, 1927, a run upon the Bank occurred. Whereupon, defendant Bank, in order to insure full and immediate payment to all depositors on demand, entered into a contract with United States National Bank and First National Bank of Portland under the terms of which said two Banks agreed to advance and loan to defendant Bank all moneys necessary to enable defendant Bank to pay its depositors on demand, defendant Bank pledging to said two Banks all of its assets as collateral to said loan and in addition certain of its stockholders, including the Estate of Henry L. Pittock, individually guaranteeing repayment of said loan; and thereupon defendant Bank began liquidation of its assets in order to effect the payment of said loan to said two Banks.

Defendant O. L. Price was elected president of defendant Bank on March 1, 1927, but it is not the fact that thereafter the management of the Bank was left entirely to defendant Price, or that this defendant in any respect, or to any degree, delegated any of his duties as director to the president of the Bank, or to anyone else. And it is not true

that in February, 1927, or in March, 1927, or at any other time, the directors, by the adoption of any plans or proposals before them, could have avoided the condition which made necessary in their judgment the agreement with United States National Bank and First National Bank of Portland and the liquidation as hereinabove described. As to the supposed plans or proposals referred to in Paragraph 16 of the bill of complaint, this defendant says:

First. No plan for the reorganization of defendant Bank as a state bank and trust company was ever developed or [80] perfected so that it was possible of accomplishment. Such a plan was at one time suggested during the conferences with the Chief Bank Examiner hereinabove referred to, but it was rejected by defendant Bank and the Chief Bank Examiner in favor of the plan for transferring the frozen assets to a corporation to be organized with capital furnished by the stockholders of defendant Bank.

Second. So far as this defendant has even been advised, J. E. Wheeler was never willing even to consider turning over his assets for the protection of defendant Bank, or for the benefit of his creditors, until long after the closing of defendant Bank. This defendant did not deter or in any way prevent or dissuade said Wheeler from any such transfer of assets, but, on the contrary, was at all times anxious and willing and often demanded that said Wheeler liquidate his property and assets in any way possible so that his indebtedness to defendant Bank might be paid.

Further answering Paragraph 16 of the bill of complaint, this defendant admits that the officers and directors of defendant Bank caused to be published on March 2, 1927, the announcement quoted on page 22 of the bill, but it is not true that the directors of the Bank left the sole management and control to defendant Price or in any manner abdicated their responsibilities as directors. Nor is it true that the run on the Bank, which occurred almost four weeks later, was permitted by defendant Price or any of the then directors of the Bank, or that they refrained from doing everything in their power to prevent it.

The announcement so published on March 2, 1927, resulted from the fact that at that time the directors of defendant Bank having been unable to carry through the plan for the organization of a corporation to take over nonproducing or frozen assets, decided that with the consent and approval of the Chief Bank Examiner, an assessment of 100% upon the [81] capital stock of the Bank should be made, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to defendant Bank of the full amount to accrue from said 100% assessment.

17.

It is not the fact that any secret or undisclosed agreements have been made as alleged in Paragraph 17 of the bill of complaint. The agreements said to have been placed in the custody of James B. Kerr are the agreements already referred to in this answer between defendant Bank and its guaranteeing stockholders on the one hand and the United States National Bank and the First National Bank of Portland on the other. Said agreements were not kept secret, but, on the contrary, were presented to and duly ratified at a meeting of the stockholders of defendant Bank held May 3, 1927, and said agreements were thereupon spread upon the minutes of the stockholders' meeting of May 3, 1927.

18.

It is not the fact that the directors of defendant Bank made or caused losses to said Bank in two million dollars, or in any sum, nor is it the fact that the directors impaired the capital stock of the Bank or wilfully or intentionally depreciated or destroyed any investment in the stock of the Bank.

19.

It is not the fact that this defendant gave out or published improperly or carelessly or negligently or unlawfully or at all, any information about the internal affairs of the Bank. [82] It is true that negotiations were had on one or more occasions for the sale and transfer to another bank of the assets, business, and goodwill of defendant Bank, and that the prospective purchaser was given such informa-

tion about the properties offered for sale as was necessary to the negotiations. But the directors conducting such negotiations acted honestly and faithfully in the interest of defendant Bank and its stockholders, and at no time did they improperly disclose or make public the private affairs of the Bank or give out any information which in any way worked to the disadvantage of the Bank.

20.

This defendant is ready and willing to disclose any and all facts in their possession which may be relevant or pertinent to any issue herein. But all books and records of defendant Bank are, and at all times have been, open to and available for inspection by the stockholders of defendant Bank, but none of said books or records is in the possession of this defendant.

21.

This defendant admits that defendant Bank is now claiming that complainant is indebted to defendant Bank. Except as thus admitted this defendant specifically denies each and every allegation of Paragraph 21 of the bill of complaint.

Complainant is indebted to defendant Bank in the sum of \$30,000, with accrued and accruing interest. For a number of years prior to July 25, 1927, complainant was indebted to defendant Bank in the sum of \$40,000, and on July 25, 1927, the indebtedness was reduced to \$30,000 by the payment of \$10,000 on account. Defendant Bank has made many demands upon complainant for the payment

of this indebtedness but excepting for the payment of \$10,000 so made on July 25, 1927, the principal of said loan has not ben reduced but complainant has insisted upon renewals of his notes as they respectively matured. [83] In the report of the examination made by the Chief National Bank Examiner of the Twelfth Federal Reserve District on October 22, 1926, referred to hereinabove in the answer to Paragraph 12 of the bill of complaint, the indebtedness due defendant Bank from complainant was listed as a nonbankable item, and defendant Bank at that time, and before and after that time, constantly demanded of complainant that this indebtedness be paid. This defendant says that nothing in any of the matters attempted to be set out in complainant's bill justifies complainant's failure to pay his indebtedness to defendant Bank, but that defendant Bank should be permitted, notwithstanding complainant's demands herein, to enforce immediate payment by complainant of the principal and interest of his debt.

22.

The answer made by this defendant to Paragraph 21 of the bill of complaint sufficiently answers Paragraph 22 of the bill. No accounting of any kind is due complainant from defendant Bank or from this defendant, and complainant should not be permitted to use the demands or claims asserted in his bill as an excuse for withholding payment of his overdue obligation to defendant Bank.

23.

For his answer to Paragraph 23 of the bill of

complaint this defendant says that the bill is without equity. This defendant and defendant Bank have not at any time refrained, and are not now refraining, from any necessary or proper step for the redress of any wrong done to defendant Bank, but nothing in any of the matters attempted to be stated in the bill justifies the charge that this defendant has committed any wrong upon said Bank, and no stockholder, prior to the institution of this suit, has ever made any complaint to defendant [84] Bank, or its directors, of any such wrong, nor has any demand ever been made for the redress of any such supposed wrong.

This defendant denies that he now has or ever has controlled the affairs of the defendant Bank, and avers that at all times in his actions as a director and stockholder he has been faithful to the rights of the Bank and of the stockholders and creditors thereof.

WHEREFORE, this defendant, having fully answered the bill of complaint herein, prays that he be hence dismissed with costs and his disbursements herein taxed against complainant.

WINTER & MAGUIRE,

Attorneys for Defendant Charles K. Spaulding.

State of Oregon,

County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 19th day of December, 1927, by receiving a copy thereof,

duly certified to as such by Robert F. Maguire of attorneys for Charles K. Spaulding.

W. C. BRISTOL,
Attorney for Complainant.

Filed December 19, 1927. [85]

AND AFTERWARDS, to wit, on the 19th day of December, 1927, there was duly filed in said court, an answer of defendant Phil Metschan, in words and figures as follows, to wit: [86]

[Title of Court and Cause.]

ANSWER OF DEFENDANT PHIL METSCHAN.

Now comes the defendant Phil Metschan and answering the bill of complaint herein says:

I.

This answering defendant admits that complainant, Charles A. Burekhardt is a citizen and resident of the State of Washington.

Defendant Chauncey McCormick is a resident and citizen of the State of Illinois.

Defendant The Northwestern National Bank is a national banking association organized under the banking laws of the United States and does business in the city of Portland, Oregon.

Defendants O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metschan, Frederick F. Pittock, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James F. Twohy are and

for a number of years last past have been directors of defendant The Northwestern National Bank, and each was and is a citizen and resident of Oregon.

Defendant Charles A. Morden is a citizen and resident of Oregon and was at one time a director of defendant The Northwestern National [87] Bank.

It is true that defendants O. L. Price and Charles A. Morden are trustees under the last will and testament of Henry L. Pittock, deceased, and that defendant Charles A. Morden is an officer of the Oregonian Publishing Company, a corporation, but this defendant avers that neither of said facts is in any respect pertinent or material to any issue herein. This defendant believes that the reference to said facts in complainant's bill is for some ulterior purpose and constitutes impertinence.

Defendant Emery Olmstead was, prior to March 1, 1927, president and a director of said bank. On that day he was succeeded as such president by defendant O. L. Price, who theretofore had been chairman of the board of directors of defendant bank.

2.

This defendant is unable to determine from the bill of complaint herein, what amount, if any, is involved in this suit; and he leaves complainant to his proof of the allegation that a sum in excess of \$3,000.00 is involved.

3.

This defendant is unable to determine from the bill of complaint herein whether the banking stat-

utes referred to in Paragraph 3 of the bill are, as there asserted, a part of and involved with the subject matter of this suit, and denies that the laws referred to in Paragraph 3 of the bill are a part of or involved in this suit.

4.

It is not the fact that any wrongs have been committed against the defendant Bank for which the defendants who are and were directors have at any time been unwilling to seek redress. On the contrary, the defendants who are or were directors, and each of them, at all times have been ready and willing to sue and [88] to call to account any and all persons or parties in any manner responsible for wrongs to defendant Bank.

It is not the fact that before the filing of the bill of complaint herein any demand was made upon defendant Bank or upon the individual defendants as its directors, to correct or right the matters referred to as wrongs in the bill of complaint; on the contrary, neither complainant, nor any other stockholder of defendant Bank has at any time made any complaint, charge, or statement to defendant Bank or any of its directors, that any such alleged wrongs had been suffered; nor has complainant or any other stockholder ever demanded or requested that any step of any kind be taken to redress such supposed wrongs or to enforce any duties or liabilities of the individual defendants as directors of defendant Bank or otherwise.

Complainant is, and for a number of years last

past has been, a stockholder of defendant Bank, but this defendant avers that complainant has at all times enjoyed each and all of the rights vested in him as stockholder. The allegations that the individual defendants through majority control of stock were or are adverse or antagonistic to complainant, or any other stockholder, or were or are attempting through such control to carry out a plan to injure defendant Bank and its minority stockholders, and each and all of the statements and insinuations of the last subparagraph of Paragraph 4 of the bill of complaint, are without any foundation in fact and are untrue and are denied.

5.

This defendant denies that at any time in the entire history of defendant Bank there ever existed any such combination between the individual defendants for the control of the stock of defendant Bank as is alleged in Paragraph 5 of the bill of complaint, or otherwise or at all. It is true that the Estate of Henry L. Pittock, of which [89] defendants O. L. Price and Charles A. Morden are trustees, is and for several years last past has been the owner of 7,696 shares out of the total 20,000 shares of stock outstanding, and that defendant O. L. Price individually owns 290 shares and that other individuals and corporations own and hold shares of stock substantially to the number stated in Paragraph 5 of the bill of complaint, except that defendant Charles A. Morden has not been the owner of any shares of stock in defendant Bank

since the year 1922. But no combination or confederation for the domination through control of a majority of the stock of defendant Bank has ever existed between this defendant and any other director or stockholder.

As they have reference to this defendant the allegations of Paragraph 5 of the bill of complaint with respect to such combination and control are without foundation in fact and are untrue and are denied.

6.

Complainant, Charles A. Burckhardt, became a stockholder of defendant Bank on July 29, 1918, by the acquisition of 250 shares.

The allegations of Paragraph 6 of the bill of complaint to the effect that representations were made to induce complainant to acquire stock in defendant Bank are not pertinent or material to any issue herein. If an answer thereto be required, this defendant says that he did not solicit complainant to acquire stock in defendant Bank, or make any representation to complainant, of the kind alleged, or otherwise, to induce him to become a stockholder.

7.

The directors of defendant Bank, including this defendant, took the oath of office prescribed by law before entering upon the performance of their duties as such directors; and this defendant says that he has in no manner violated said oath of office but on the contrary he has faithfully and honestly

assumed and performed the duties and obligations of his office as such director. [90]

8.

It is not the fact that Henry L. Pittock in his lifetime or the trustees of his estate after his death, or any other persons or interests identified with them, dominated or controlled defendant Bank from its organization down to March 29, 1927, or at any time. No such combination for control ever existed, as this defendant has pointed out in his answer to Paragraph 5 of the bill of complaint. Henry L. Pittock in his lifetime, and the trustees of his estate after his death, at no time have exercised or attempted to exercise in or about the affairs of defendant Bank any other or greater rights than those lawfully vested in them as owners of stock of defendant Bank. This defendant avers that during all the time he was a director of the defendant Bank that he was independent of the domination or control of any person, persons, or corporation, and that at all of such times he acted individually as he deemed to be for the best interests of the Bank and all of its stockholders.

9.

Increases of capital and surplus of defendant Bank were made in substantially the amounts and at about the times stated in Paragraph 9 of the bill of complaint. It is true also, although the fact is not pertinent or material to any issue herein, that at the time the capital was increased to \$2,000,000 in 1922, the stockholders of defendant Bank, in

order to strengthen its position and to offset inevitable and unavoidable losses due to the sudden deflation of values following the termination of the World War, also voluntarily paid in the sum of \$500,000, \$350.00 of which was credited to the earnings account, the remainder, \$150,000, going to surplus, thereby increasing the surplus account from \$250,000 to \$400,000.

10.

This defendant is unable to determine the nature of the charge made against the defendants in Paragraph 10 of the bill of complaint. He denies specifically that he in any manner or to any extent whatsoever, [91] caused, required, or directed to be lost the sums listed in said paragraph or any sum, or any assets of said Bank.

Each of the persons and corporations listed in said Paragraph is indebted to defendant Bank and in some instances a portion of such indebtedness has been charged to profit and loss. But in each case, excepting the case of McCormick Lumber Co., the indebtedness is the result of inability on the part of the borrowers to repay when due loans made in the ordinary course of business at times and under circumstances such that this individual defendant was in no manner at fault in the extension of credit. In large part these loans were made prior to the year 1920, to borrowers then financially responsible and in most instances supported by collateral entirely adequate at the time in value, and the inability of the borrowers to repay the loans

when due resulted from the sudden and unexpected drop in merchandise and other values following the cessation of the World War. Since that time the officers of defendant Bank have been active and diligent in their effort to collect said loans and substantial recoveries have been made and are still being made thereon.

All loans made by defendant Bank to McCormick Lumber Company have been paid in full. The indebtedness now owing by said Lumber Company is the result of the acceptance by defendant Bank for credit to the account of the McCormick Lumber Company of certain checks and drafts, payment of which was later refused by the drawers. The acceptance of these checks and drafts for immediate credit was without the knowledge of this defendant and he had no notice thereof or opportunity whatever of preventing such crediting of either checks or drafts, and he is in no respect chargeable with negligence or fault in respect thereto.

It is not the fact that this defendant in 1925 or at any time failed, neglected or refused to comply with any direction from any Bank Examiner or other representative of the Comptroller of the Currency to reduce the line of credit granted to J. E. Wheeler or to [92] any companies in which he was interested. All present indebtedness due from said Wheeler, Wheeler Timber Company, Wheeler Estate, and Telegram Publishing Company, is the result of loans made several years prior to 1925 upon a sufficient showing of financial worth and supported in large part by adequate guar-

anties and/or collateral. Renewals of said loans were made from time to time when the borrowers were unable to pay at maturity, but it is not true that the Examiner of National Banks requested the so-called Wheeler lines to be reduced because too much was loaned to one person, and such renewals were never granted in disobedience to any direction or against the advise of any Bank Examiner or other representative of the Comptroller of the Currency.

Further answering Paragraph 10 of the bill of complaint this defendant says that the loans made to the persons and corporations listed in paragraph 10 of the bill of complaint resulted from extensions of credit granted to said borrowers prior to the year 1923. At each annual meeting of the stockholders of defendant Bank from the year 1919 down to and including the year 1927, with the exception of the year 1924, complainant was represented in person or by proxy, and at each of such annual meetings reports showing the acts of the directors for the years preceding the respective annual meetings were placed before the meeting and resolutions duly and regularly adopted ratifying and approving the acts of the directors in such preceding years respectively. At the annual meeting for the year 1920, held January 30, in that year, complainant attended in person and personally offered the resolution which was thereupon adopted approving the acts of the directors in the preceding year. Complainant therefore should be and is estopped from making any complaint of the actions of this

defendant, who was a director, in extending credit to the persons and corporations listed in Paragraph 10 of the bill of complaint, and should be and is estopped from averring or proving the same.

Further answering Paragraph 10 of the bill of complaint, defendant [93] says, that he became a director of defendant Bank on the 13th day of January, 1920. If complainant's bill is intended as a charge that losses were made in the amounts stated in Paragraph 10 because of improper loans, this defendant says that he was not a director of the defendant Bank when the loans were made and the losses resulting therefrom, if any, accrued before he assumed office; and since his assumption of office no act or omission on his part or on the part of any the directors has increased or affected the amount of loss, if any, attributable to such loans.

11.

The allegations of Paragraph 11 of the bill of complaint are untrue and are denied. Defendant Charles A. Morden was elected a director of defendant Bank on January 11, 1921, and served as such director until August 31, 1922, when he resigned, having sold his stock for a valuable consideration to the defendant Mark Skinner. Defendant Morden served as a member of the Examining Committee from the time of his election as a director until the end of the year 1921 only. The defendant Spaulding was elected and became a member of the Examining Committee on the — day of —, 1923. During this period the Examining Committee made regular reports to the directors

and such reports were regularly spread upon the minutes of the meetings of the board of directors. But it is not the fact that said reports or any of them, showed any condition of wrong administration or impending losses or any condition in the affairs of the defendant Bank requiring action by the directors to avoid loss. During this period and at all times the directors met regularly and carefully reviewed the reports of the Examining Committee and took such action in respect thereto as in the exercise of sound judgment seemed necessary. No reports were suppressed and nothing in the condition of the Bank was ever kept from the stockholders, and it is untrue that the defendant Morden resigned as director because of any such undisclosed condition [94] in the affairs of the Bank.

It is not true that at any time during the existence of the defendant Bank its Examining Committee made any report which would show a favorable but incorrect condition of the Bank or any report which showed any condition of said Bank except the true condition thereof as said Examining Committee found and believed to exist and attempted to disclose by its reports. All reports of the Examining Committee were made to the board or directors of the Bank only and were thereupon placed with the minutes of the meetings of the directors, at which said reports were received, and thereupon all of said reports became available for examination by all of the stockholders of the Bank and by the District Bank Examiner and any other representa-

tive of the Comptroller of the Currency. All reports of the Examining Committee remained at all times and now remain in the minutes of the directors' meetings and were in fact read and their contents known to and understood by the District Bank Examiner, and could have been read and their contents known to and understood by any stockholder of the Bank or any representative of the Comptroller of the Currency.

It is untrue that the Examining Committee ever made a confidential, private or secret report, or any report, to Mark Skinner, vice-president, or to other officers or directors of the Bank, or to the directors of said Bank, which showed any condition different from that disclosed by any report made to the District Bank Examiner, or to the Comptroller of the Currency, but whether the Comptroller of the Currency in person received copies of all reports made by the Examining Committee to the board of directors, defendant cannot say, although he avers that copies of such reports of the Examining Committee were sent to the Comptroller of the Currency whenever requested. [95]

12.

This defendant is unable to determine what is attempted to be alleged in Paragraph 12 of the bill of complaint. Pursuant to the requirements of the by-laws of defendant Bank there was at all times an executive committee consisting of a majority of the board of directors, which committee met weekly and passed on applications for credit and kept fully

informed in regard to the purchase and sales of securities, loans on collateral, discounts and other business activities of defendant Bank. Regular monthly meetings of the board of directors were held at which the minutes of meetings of the executive committee were regularly read and submitted for approval.

There was also maintained at all times, in accordance with the by-laws of defendant Bank, an Examining Committee whose duty it was to investigate the affairs and business of defendant Bank twice in each year, and said committee during all of said times carefully investigated the affairs of defendant Bank and reported the results of such investigations to the board of directors; and this defendant alleges that throughout the period mentioned in the complaint every effort was made by him with respect to all matters coming within the scope of his office or duty as a director to supervise and manage the affairs and business of defendant Bank faithfully and honestly.

On October 22, 1926, the Chief National Bank Examiner of the Twelfth Federal Reserve District advised defendant Bank by letter of the result of an examination of its assets and stated that it would be necessary to provide additional funds to the amount of not less than \$1,000,000 in order that nonproducing assets in this total could be eliminated. Thereafter this defendant, with other defendants, acting with the approval of said Bank Examiner, undertook the organization of a corporation capitalized at \$1,500,000, one-half thereof to be

provided [96] by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank nonproducing or "frozen" assets, as described in the report of said Bank Examiner. Such acting defendants made every effort to consummate said plan but were unable to do so. But thereafter, following a further examination by said Bank Examiner, it was determined that it was necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

The allegation that acts or omissions of this defendant, as a director or otherwise, caused the defendant Bank to go into liquidation is untrue.

Except as hereinabove in this answer to Paragraph 12 admitted, this defendant specifically denies each and every allegation of said Paragraph 12.

13.

It is not the fact that at any time this defendant suppressed or concealed from stockholders any in-

formation regarding the condition of the Bank, and it is not true that stockholders' meetings were in any respect manipulated or controlled by this defendant or any person in combination with him. No such combination among stockholders as alleged in Paragraph 13 of the bill existed, and during the entire history of defendant Bank the rights of minority stockholders in the administration of its affairs were never in any degree impaired or restricted. [97]

14.

The allegations of Paragraph 14 of the bill of complaint are untrue. This defendant did not participate in any way in the acquisition of stock in defendant Bank by J. E. Wheeler, or aid him in any particular in securing credit for, or in the financing of his purchase of said stock. On the contrary, said purchase by J. E. Wheeler of stock theretofore owned by Guy M. Standifer, L. B. Menefee and R. V. Jones was consummated without the knowledge or consent of this defendant.

15.

The allegations of Paragraph 15 of the bill of complaint are untrue. This defendant was fully aware in 1925 and 1926 of the extent to which the assets of defendant Bank were nonproductive or frozen, and at all times during said years, and during the preceding years, had striven faithfully and honestly to convert said frozen assets into bankable productive commercial paper.

In June, 1926, a committee appointed by the di-

rectors, consisting of defendants Price, Metschan and Stewart, conferred with the Comptroller of the Currency and requested him to have an examination made of the condition of the Bank so that with the approval of the Comptroller, or his representative, steps could be taken for the elimination of all nonproductive or frozen assets. Thereafter such an examination was made and other conferences were held with the Chief Bank Examiner of the Twelfth Federal Reserve District and the Comptroller, and thereafter and in December, 1926, with the approval of the Chief Bank Examiner and the Comptroller, defendant Bank and its directors determined to organize a corporation with a capital of \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation [98] to purchase and take over from defendant Bank nonproducing or frozen assets as designated in the reports of the Chief Bank Examiner.

This defendant and other defendants made every effort to consummate said plan but were unable to do so; and when it was ascertained that said plan could not be successfully carried through, it was determined to be necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agree-

ment said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

This defendant at no time failed or refused to comply with any direction or request of the Comptroller of the Currency. On the contrary, he at all times worked in co-operation with him, in the effort to formulate and carry out a plan for the elimination of all nonproducing or frozen assets.

It is not the fact that during 1926, or the year 1927, as alleged in paragraph 15 of the bill of complaint, any further loans were made or credit extended to J. E. Wheeler, either directly or upon his endorsement. On the contrary, this defendant for a long time prior thereto was endeavoring in every way within his power as director, to secure the retirement, in part at least, of the indebtedness owing by said J. E. Wheeler, and the companies in which he was interested.

No loans in excess of the amounts permitted by law were ever made by the board of directors of said Bank to J. E. Wheeler or to companies in which he was interested or to any other persons, [99] firms, or corporations.

16.

The allegations of Paragraph 16 of the bill of complaint are untrue. Defendant Bank was never in such a condition that it was unable to pay its depositors upon demand until on March 28, 1927, a

run upon the Bank occurred. Whereupon, defendant Bank, in order to insure full and immediate payment to all depositors on demand, entered into a contract with United States National Bank and First National Bank of Portland under the terms of which said two Banks agreed to advance and loan to defendant Bank all moneys necessary to enable defendant Bank to pay its depositors on demand, defendant Bank pledging to said two Banks all of its assets as collateral to said loan and in addition certain of its stockholders, including the Estate of Henry L. Pittock, individually guaranteeing repayment of said loan; and thereupon defendant Bank began liquidation of its assets in order to effect the payment of said loan to said two Banks.

Defendant O. L. Price was elected president of defendant Bank on March 1, 1927, but it is not the fact that thereafter the management of the Bank was left entirely to defendant Price, or that this defendant in any respect, or to any degree, delegated any of his duties as director to the president of the Bank, or to anyone else. And it is not true that in February, 1927, or in March, 1927, or at any other time, the directors, by the adoption of any plans or proposals before them, could have avoided the condition which made necessary in their judgment the agreement with United States National Bank and First National Bank of Portland and the liquidation as hereinabove described. As to the supposed plans or proposals referred to in Para-

graph 16 of the bill of complaint, this defendant says :

First. No plan for the reorganization of defendant Bank as a state bank and trust company was ever developed or [100] perfected so that it was possible of accomplishment. Such a plan was at one time suggested during the conferences with the Chief Bank Examiner hereinabove referred to, but it was rejected by defendant Bank and the Chief Bank Examiner in favor of the plan for transferring the frozen assets to a corporation to be organized with capital furnished by the stockholders of defendant Bank.

Second. So far as this defendant has ever been advised, J. E. Wheeler was never willing even to consider turning over his assets for the protection of defendant Bank, or for the benefit of his creditors, until long after the closing of defendant Bank. This defendant did not deter or in any way prevent or dissuade said Wheeler from any such transfer of assets, but, on the contrary, was at all times anxious and willing and often demanded that said Wheeler liquidate his property and assets in any way possible so that his indebtedness to defendant Bank might be paid.

Further answering Paragraph 16 of the bill of complaint, this defendant admits that the officers and directors of defendant Bank caused to be published on March 2, 1927, the announcement quoted on page 22 of the bill, but it is not true that the directors of the Bank left the sole management and control to defendant Price or in any manner abdicated

their responsibilities as directors. Nor is it true that the run on the Bank, which occurred almost four weeks later, was permitted by defendant Price or any of the then directors of the Bank, or that they refrained from doing everything in their power to prevent it.

The announcement so published on March 2, 1927, resulted from the fact that at that time the directors of defendant Bank having been unable to carry through the plan for the organization of a corporation to take over nonproducing or frozen assets, decided that with the consent and approval of the Chief Bank Examiner, an assessment of 100% upon the [101] capital stock of the Bank should be made, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to defendant Bank of the full amount to accrue from said 100% assessment.

17.

It is not the fact that any secret or undisclosed agreements have been made as alleged in Paragraph 17 of the bill of complaint. The agreements said to have been placed in the custody of James B. Kerr are the agreements already referred to in this answer between defendant Bank and its guar-

anteeing stockholders on the one hand and the United States National Bank and the First National Bank of Portland on the other. Said agreements were not kept secret, but, on the contrary, were presented to and duly ratified at a meeting of the stockholders of defendant Bank held May 3, 1927, and said agreements were thereupon spread upon the minutes of the stockholders' meeting of May 3, 1927.

18.

It is not the fact that the directors of defendant Bank made or caused losses to said Bank in two million dollars, or in any sum, nor is it the fact that the directors impaired the capital stock of the Bank or wilfully or intentionally depreciated or destroyed any investment in the stock of the Bank.

19.

It is not the fact that this defendant gave out or published improperly or carelessly or negligently or unlawfully, or at all, any information about the internal affairs of the Bank. [102] It is true that negotiations were had on one or more occasions for the sale and transfer to another bank of the assets, business, and goodwill of defendant Bank, and that the prospective purchaser was given such information about the properties offered for sale as was necessary to the negotiations. But the directors conducting such negotiations acted honestly and faithfully in the interest of defendant Bank and its stockholders, and at no time did they improperly disclose or make public the private affairs of the

Bank or give out any information which in any way worked to the disadvantage of the Bank.

20.

This defendant is ready and willing to disclose any and all facts in their possession which may be relevant or pertinent to any issue herein. But all books and records of defendant Bank are, and at all times have been, open to and available for inspection by the stockholders of defendant Bank, but none of said books or records is in the possession of this defendant.

21.

This defendant admits that defendant Bank is now claiming that complainant is indebted to defendant Bank. Except as thus admitted this defendant specifically denies each and every allegation of Paragraph 21 of the bill of complaint.

Complainant is indebted to defendant Bank in the sum of \$30,000, with accrued and accruing interest. For a number of years prior to July 25, 1927, complainant was indebted to defendant Bank in the sum of \$40,000, and on July 25, 1927, the indebtedness was reduced to \$30,000 by the payment of \$10,000 on account. Defendant Bank has made many demands upon complainant for the payment of this indebtedness but excepting for the payment of \$10,000 so made on July 25, 1927, the principal of said loan has not been reduced but complainant has insisted upon renewals of his notes as they respectively matured. [103] In the report of the examination made by the Chief National Bank Ex-

aminer of the Twelfth Federal Reserve District on October 22, 1926, referred to hereinabove in the answer to Paragraph 12 of the bill of complaint, the indebtedness due defendant Bank from complainant was listed as a nonbankable item, and defendant Bank at that time, and before and after that time, constantly demanded of complainant that this indebtedness be paid. This defendant says that nothing in any of the matters attempted to be set out in complainant's bill justifies complainant's failure to pay his indebtedness to defendant Bank, but that defendant Bank should be permitted, notwithstanding complainant's demands herein, to enforce immediate payment by complainant of the principal and interest of his debt.

22.

The answer made by this defendant to Paragraph 21 of the bill of complaint sufficiently answers Paragraph 22 of the bill. No accounting of any kind is due complainant from defendant Bank or from this defendant, and complainant should not be permitted to use the demands or claims asserted in his bill as an excuse for withholding payment of his overdue obligation to defendant Bank.

23.

For his answer to Paragraph 23 of the bill of complaint this defendant says that the bill is without equity. This defendant and defendant Bank have not at any time refrained, and are not now refraining, from any necessary or proper step for the redress of any wrong done to defendant Bank,

but nothing in any of the matters attempted to be stated in the bill justifies the charge that this defendant has committed any wrong upon said Bank, and no stockholder, prior to the institution of this suit, has ever made any complaint to defendant [104] Bank, or its directors, of any such wrong, nor has any demand ever been made for the redress of any such supposed wrong.

This defendant denies that he now has or ever has controlled the affairs of the defendant Bank, and avers that at all times in his actions as a director and stockholder he has been faithful to the rights of the Bank and of the stockholders and creditors thereof.

WHEREFORE, this defendant, having fully answered the bill of complaint herein, prays that he be hence dismissed with costs and his disbursements herein taxed against complainant.

DEY, HAMPSON & NELSON,

Attorneys for Defendant Phil Metschan.

ALFRED A. HAMPSON,

Of Counsel. [105]

State of Oregon,
County of Multnomah,—ss.

I, Phil Metschan, make solemn oath and say: I am the defendant named in and who makes the foregoing answer; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

(Sgd.) PHIL METSCHAN.

Subscribed and sworn to before me this 19th day of December, 1927.

[Notarial Seal]

(Sgd.) ALFRED A. HAMPSON,
Notary Public for Oregon.

My commission expires August 22, 1928.

State of Oregon,
County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 19th day of December, 1927, by receiving a copy thereof, duly certified to as such by Alfred A. Hampson of attorneys for defendant Phil Metschan.

W. C. BRISTOL,
Attorney for Plaintiff.

Filed December 19, 1927. [106]

AND AFTERWARDS, to wit, on the 19th day of December, 1927, there was duly filed in said court, an answer of defendant, Charles A. Morden, in words and figures as follows, to wit:
[107]

[Title of Court and Cause.]

ANSWER OF DEFENDANT CHARLES A.
MORDEN.

Now comes the defendant Charles A. Morden, and answering the bill of complaint herein says:

1.

This answering defendant admits that complainant, Charles A. Burckhardt is a citizen and resident of the State of Washington.

Defendant Chauncey McCormick is a resident and citizen of the State of Illinois.

Defendant The Northwestern National Bank is a national banking association organized under the banking laws of the United States and does business in the city of Portland, Oregon.

Defendants O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metschan, Frederick F. Pittock, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James F. Twohy are and for a number of years last past have been directors of defendant The Northwestern National Bank, and each was and is a citizen and resident of Oregon.

Defendant Charles A. Morden is a citizen and resident of Oregon and was at one time a director of defendant The Northwestern National [108] Bank.

It is true that defendants O. L. Price and Charles A. Morden are trustees under the last will and testament of Henry L. Pittock, deceased, and that defendant Charles A. Morden is an officer of the Oregonian Publishing Company, a corporation, but this defendant avers that neither of said facts is in any respect pertinent or material to any issue herein. This defendant believes that the reference to said facts in complainant's bill is for some ulterior purpose and constitutes impertinence.

Defendant Emery Olmstead was, prior to March 1, 1927, president and a director of said bank. On

that day he was succeeded as such president by defendant O. L. Price, who theretofore had been chairman of the board of directors of defendant Bank.

2.

This defendant is unable to determine from the bill of complaint herein, what amount, if any, is involved in this suit; and he leaves complainant to his proof of the allegation that a sum in excess of \$3,000.00 is involved.

3.

This defendant is unable to determine from the bill of complaint herein whether the banking statutes referred to in Paragraph 3 of the bill are, as there asserted, a part of and involved with the subject matter of this suit, and denies that the laws referred to in Paragraph 3 of the bill are a part of or involved in this suit.

4.

It is not the fact that any wrongs have been committed against the defendant Bank for which the defendants who are and were directors have at any time been unwilling to seek redress. On the contrary, the defendants who are or were directors, and each of them, at all times have been ready and willing, and are now ready and willing to sue and [109] to call to account any and all persons or parties in any manner responsible for wrongs to defendant Bank.

It is not the fact that before the filing of the bill of complaint herein any demand was made upon

defendant Bank or upon the individual defendants as its directors, to correct or right the matters referred to as wrongs in the bill of complaint; on the contrary, neither complainant, nor any other stockholder of defendant Bank has at any time made any complaint, charge, or statement to defendant Bank or any of its directors, that any such alleged wrongs had been suffered; nor has complainant or any other stockholder ever demanded or requested that any step of any kind be taken to redress such supposed wrongs or to enforce any duties or liabilities of the individual defendants as directors of defendant Bank or otherwise.

Complainant is, and for a number of years last past has been, a stockholder of defendant Bank, but this defendant avers that complainant has at all times enjoyed each and all of the rights vested in him as stockholder. The allegations that the individual defendants through majority control of stock were or are adverse or antagonistic to complainant, or any other stockholder, or were or are attempting through such control to carry out a plan to injure defendant Bank and its minority stockholders, and each and all of the statements and insinuations of the last subparagraph of Paragraph 4 of the bill of complaint, are without any foundation in fact and are untrue and are denied.

5.

This defendant denies that at any time in the entire history of defendant Bank there ever existed any such combination between the individual defendants for the control of the stock of defendant

Bank as is alleged in Paragraph 5 of the bill of complaint, or otherwise or at all. It is true that the Estate of Henry L. Pittock, of which [110] defendants O. L. Price and Charles A. Morden are trustees, is and for several years last past has been the owner of 7,696 shares out of the total 20,000 shares of stock outstanding, and that defendant O. L. Price individually owns 290 shares and that other individuals and corporations own and hold shares of stock substantially to the number stated in Paragraph 5 of the bill of complaint, except that defendant Charles A. Morden has not been the owner of any shares of stock in defendant Bank since the year 1922. But no combination or confederation for the domination through control of a majority of the stock of defendant Bank has ever existed between this defendant and any other director or stockholder.

As they have reference to this defendant the allegations of Paragraph 5 of the bill of complaint with respect to such combination and control are without foundation in fact and are untrue and are denied.

6.

Complainant, Charles A. Burckhardt, became a stockholder of defendant Bank on July 29, 1918, by the acquisition of 250 shares.

The allegations of Paragraph 6 of the bill of complaint to the effect that representations were made to induce complainant to acquire stock in defendant Bank are not pertinent or material to any issue herein. If an answer thereto be required, this defendant says that he did not solicit complain-

ant to acquire stock in defendant Bank, or make any representation to complainant, of the kind alleged, or otherwise, to induce him to become a stockholder.

7.

The directors of defendant Bank, including this defendant, took the oath of office prescribed by law before entering upon the performance of their duties as such directors; and this defendant says that he has in no manner violated said oath of office but on the contrary he has faithfully and honestly assumed and performed the duties and obligations of his office as such director. [111]

8.

It is not the fact that Henry L. Pittock in his lifetime or the trustees of his estate after his death, or any other persons or interests identified with them, dominated or controlled defendant Bank from its organization down to March 29, 1927, or at any time. No such combination for control ever existed, as this defendant has pointed out in his answer to Paragraph 5 of the bill of complaint. Henry L. Pittock in his lifetime, and the trustees of his estate after his death, at no time have exercised or attempted to exercise in or about the affairs of defendant Bank any other or greater rights than those lawfully vested in them as owners of stock of defendant Bank. This defendant avers that during all the time he was a director of the defendant Bank that he was independent of the domination or control of any person, persons, or corporation, and that at all of such times he acted individually as he

deemed to be for the best interests of the Bank and all of its stockholders.

9.

Increases of capital and surplus of defendant Bank were made in substantially the amounts and at about the times stated in Paragraph 9 of the bill of complaint. It is true also, although the fact is not pertinent or material to any issue herein, that at the time the capital was increased to \$2,000,000 in 1922, the stockholders of defendant Bank, in order to strengthen its position and to offset inevitable and unavoidable losses due to the sudden deflation of values following the termination of the World War, also voluntarily paid in the sum of \$500,000, \$350.00 of which was credited to the earnings account, the remainder, \$150,000, going to surplus, thereby increasing the surplus account from \$250,000 to \$400,000.

10.

This defendant is unable to determine the nature of the charge made against the defendants in Paragraph 10 of the bill of complaint. He denies specifically that he in any manner or to any extent whatsoever, [112] caused, required, or directed to be lost the sums listed in said paragraph or any sum, or any assets of said Bank.

Each of the persons and corporations listed in said Paragraph is indebted to defendant Bank and in some instances a portion of such indebtedness has been charged to profit and loss. But in each case, excepting the case of McCormick Lumber Co., the indebtedness is the result of inability on the part of

the borrowers to repay when due loans made in the ordinary course of business at times and under circumstances such that this individual defendant was in no manner at fault in the extension of credit. In large part these loans were made prior to the year 1920, to borrowers then financially responsible and in most instances supported by collateral entirely adequate at the time in value, and the inability of the borrowers to repay the loans when due resulted from the sudden and unexpected drop in merchandise and other values following the cessation of the World War. Since that time the officers of defendant Bank have been active and diligent in their efforts to collect said loans and substantial recoveries have been made and are still being made thereon.

All loans made by defendant Bank to McCormick Lumber Company have been paid in full. The indebtedness now owing by said Lumber Company is the result of the acceptance by defendant Bank for credit to the account of the McCormick Lumber Company of certain checks and drafts, payment of which was later refused by the drawers. The acceptance of these checks and drafts for immediate credit was without the knowledge of this defendant and he had no notice thereof or opportunity whatever of preventing such crediting of either checks or drafts, and he is in no respect chargeable with negligence or fault in respect thereto.

It is not the fact that this defendant in 1925 or at any time failed, neglected or refused to comply with any direction from any Bank Examiner or other representative of the Comptroller of the

Currency to reduce the line of credit granted to J. E. Wheeler or to [113] any companies in which he was interested. All present indebtedness due from said Wheeler, Wheeler Timber Company, Wheeler Estate, and Telegram Publishing Company, is the result of loans made several years prior to 1925 upon a sufficient showing of financial worth and supported in large party by adequate guaranties and/or collateral. Renewals of said loans were made from time to time when the borrowers were unable to pay at maturity, but it is not true that the Examiner of National Banks requested the so-called Wheeler lines to be reduced because too much was loaned to one person, and such renewals were never granted in disobedience to any direction or against the advice of any Bank Examiner or other representative of the Comptroller of the Currency.

Further answering Paragraph 10 of the bill of complaint this defendant says that the loans made to the persons and corporations listed in Paragraph 10 of the bill of complaint resulted from extensions of credit granted to said borrowers prior to the year 1923. At each annual meeting of the stockholders of defendant Bank from the year 1919 down to and including the year 1927, with the exception of the year 1924, complainant was represented in person or by proxy, and at each of such annual meetings reports showing the acts of the directors for the years preceding the respective annual meetings were placed before the meeting and resolutions duly and regularly adopted ratifying and approving the acts

of the directors in such preceding years respectively. At the annual meeting for the year 1920, held January 30, in that year, complainant attended in person and personally offered the resolution which was thereupon adopted approving the acts of the directors in the preceding year. Complainant therefore should be and is estopped from making any complaint of the actions of this defendant, who was a director, in extending credit to the persons and corporations listed in Paragraph 10 of the bill of complaint, and should be and is estopped from averring or proving the same.

Further answering Paragraph 10 of the bill of complaint, defendant [114] says, that he became a director of defendant Bank on the — day of —, 19—. If complainant's bill is intended as a charge that losses were made in the amounts stated in Paragraph 10 because of improper loans, this defendant says that he was not a director of the defendant Bank when the loans were made and the losses resulting therefrom, if any, accrued before he assumed office; and since his assumption of office no act or omission on his part or on the part of any the directors has increased or affected the amount of loss, if any, attributable to such loans.

11.

The allegations of Paragraph 11 of the bill of complaint are untrue and are denied. Defendant Charles A. Morden was elected a director of defendant Bank on January 11, 1921, and served as such director until August 31, 1922, when he resigned, having sold his stock for a valuable consideration to

the defendant Mark Skinner. Defendant Morden served as a member of the Examiner Committee from the time of his election as a director until the end of the year 1921 only. The defendant Spaulding was elected and became a member of the Examining Committee on the — day of —, 1923. During this period the Examining Committee made regular reports to the directors and such reports were regularly spread upon the minutes of the meetings of the board of directors. But it is not the fact that said reports, or any of them, showed any condition of wrong administration or impending losses or any condition in the affairs of the defendant Bank requiring action by the directors to avoid loss. During this period and at all times the directors met regularly and carefully reviewed the reports of the Examining Committee and took such action in respect thereto as in the exercise of sound judgment seemed necessary. No reports were suppressed and nothing in the condition of the Bank was ever kept from the stockholders, and it is untrue that the defendant Morden resigned as director because of any such undisclosed condition [115] in the affairs of the Bank.

It is not true that at any time during the existence of the defendant Bank its Examining Committee made any report which would show a favorable but incorrect condition of the Bank or any report which showed any condition of said Bank except the true condition thereof as said Examining Committee found and believed to exist and attempted to disclose by its reports. All reports of the Examining Committee were made to the board of directors

of the Bank only and were thereupon placed with the minutes of the meetings of the directors, at which said reports were received, and thereupon all of said reports become available for examination by all of the stockholders of the Bank and by the District Bank Examiner and any other representative of the Comptroller of the Currency. All reports of the Examining Committee remained at all times and now remain in the minutes of the directors' meetings and were in fact read and their contents known to and understood by the District Bank Examiner, and could have been read and their contents known to and understood by any stockholder of the Bank or any representative of the Comptroller of the Currency.

It is untrue that the Examining Committee ever made a confidential, private or secret report, or any report, to Mark Skinner, vice-president, or to other officers or directors of the Bank, or to the directors of said Bank, which showed any condition different from that disclosed by any report made to the District Bank Examiner, or to the Comptroller of the Currency, but whether the Comptroller of the Currency in person received copies of all reports made by the Examining Committee to the board of directors, defendant cannot say, although he avers that copies of such reports of the Examining Committee were sent to the Comptroller of the Currency whenever requested. [116]

12.

This defendant is unable to determine what is attempted to be alleged in Paragraph 12 of the bill

of complaint. Pursuant to the requirements of the by-laws of defendant Bank there was at all times an executive committee consisting of a majority of the board of directors, which committee met weekly and passed on applications for credit and kept fully informed in regard to the purchase and sales of securities, loans on collateral, discounts and other business activities of defendant Bank. Regular monthly meetings of the board of directors were held at which the minutes of meetings of the executive committee were regularly read and submitted for approval.

There was also maintained at all times, in accordance with the by-laws of defendant Bank, an Examining Committee whose duty it was to investigate the affairs and business of defendant Bank twice in each year, and said committee during all of said times carefully investigated the affairs of defendant Bank and reported the results of such investigations to the board of directors; and this defendant alleges that throughout the period mentioned in the complaint every effort was made by him with respect to all matters coming within the scope of his office or duty as a director to supervise and manage the affairs and business of defendant Bank faithfully and honestly.

On October 22, 1926, the Chief National Bank Examiner of the Twelfth Federal Reserve District advised defendant Bank by letter of the result of an examination of its assets and stated that it would be necessary to provide additional funds to the amount of not less than \$1,000,000 in order that

nonproducing assets in this total could be eliminated. Thereafter this defendant, with other defendants, acting with the approval of said Bank Examiner, undertook the organization of a corporation capitalized at \$1,500,000, one-half thereof to be provided [117] by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank nonproducing or "frozen" assets, as described in the report of said Bank Examiner. Such acting defendants made every effort to consummate said plan but were unable to do so. But thereafter, following a further examination by said Bank Examiner, it was determined that it was necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

The allegation that acts or omissions of this defendant, as a director or otherwise, caused the defendant Bank to go into liquidation is untrue.

Except as hereinabove in this answer to Paragraph 12 admitted, this defendant specifically denies each and every allegation of said Paragraph 12.

13.

It is not the fact that at any time this defendant suppressed or concealed from stockholders any information regarding the condition of the Bank, and it is not true that stockholders meetings were in any respect manipulated or controlled by this defendant or any person in combination with him. No such combination among stockholders as alleged in Paragraph 13 of the bill existed, and during the entire history of defendant Bank the rights of minority stockholders in the administration of its affairs were never in any degree impaired or restricted. [118]

14.

The allegations of Paragraph 14 of the bill of complaint are untrue. This defendant did not participate in any way in the acquisition of stock in defendant Bank by J. E. Wheeler, or aid him in any particular in securing credit for, or in the financing of his purchase of said stock. On the contrary, said purchase by J. E. Wheeler of stock theretofore owned by Guy M. Standifer, L. B. Menefee and R. V. Jones was consummated without the knowledge or consent of this defendant.

15.

The allegations of Paragraph 15 of the bill of complaint are untrue. This defendant was fully aware in 1925 and 1926 of the extent to which the assets of defendant Bank were nonproductive or frozen, and at all times during said years, and during the preceding years, had striven faithfully and

honestly to convert said frozen assets into bankable productive commercial paper.

In June, 1926, a committee appointed by the directors, consisting of defendants Price, Metschan and Stewart, conferred with the Comptroller of the Currency and requested him to have an examination made of the condition of the Bank so that with the approval of the Comptroller, or his representative, steps could be taken for the elimination of all non-productive or frozen assets. Thereafter such an examination was made and other conferences were held with the Chief Bank Examiner of the Twelfth Federal Reserve District and the Comptroller, and thereafter and in December, 1926, with the approval of the Chief Bank Examiner and the Comptroller, defendant Bank and its directors determined to organize a corporation with a capital of \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation [119] to purchase and take over from defendant Bank non-producing or frozen assets as designated in the reports of the Chief Bank Examiner.

This defendant and other defendants made every effort to consummate said plan but were unable to do so; and when it was ascertained that said plan could not be successfully carried through, it was determined to be necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7696 shares,

undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

This defendant at no time failed or refused to comply with any direction or request of the Comptroller of the Currency. On the contrary, he at all times worked in co-operation with him, in the effort to formulate and carry out a plan for the elimination of all nonproducing or frozen assets.

It is not the fact that during 1926, or the year 1927, as alleged in Paragraph 15 of the bill of complaint, any further loans were made or credit extended to J. E. Wheeler, either directly or upon his endorsement. On the contrary, this defendant for a long time prior thereto was endeavoring in every way within his power as director, to secure the retirement, in part at least, of the indebtedness owing by said J. E. Wheeler, and the companies in which he was interested.

No loans in excess of the amounts permitted by law were ever made by the board of directors of said Bank to J. E. Wheeler or to companies in which he was interested or to any other persons, [120] firms, or corporations.

16.

The allegations of Paragraph 16 of the bill of complaint are untrue. Defendant Bank was never

in such a condition that it was unable to pay its depositors upon demand until March 28, 1927, a run upon the Bank occurred. Whereupon, defendant Bank, in order to insure full and immediate payment to all depositors on demand, entered into a contract with United States National Bank and First National Bank of Portland under the terms of which said two Banks agreed to advance and loan to defendant Bank all moneys necessary to enable defendant Bank to pay its depositors on demand, defendant Bank pledging to said two Banks all of its assets as collateral to said loan and in addition certain of its stockholders, including the Estate of Henry L. Pittock, individually guaranteeing repayment of said loan; and thereupon defendant Bank began liquidation of its assets in order to effect the payment of said loan to said two Banks.

Defendant O. L. Price was elected president of defendant Bank on March 1, 1927, but it is not the fact that thereafter the management of the Bank was left entirely to defendant Price, or that this defendant in any respect, or to any degree, delegated any of his duties as director to the president of the Bank, or to anyone else. And it is not true that in February, 1927, or in March, 1927, or at any other time, the directors, by the adoption of any plans or proposals before them, could have avoided the condition which made necessary in their judgment the agreement with United States National Bank and First National Bank of Portland and the liquidation as hereinabove described. As to the supposed

plans or proposals referred to in Paragraph 16 of the bill of complaint, this defendant says:

First. No plan for the reorganization of defendant Bank as a state bank and trust company was ever developed or [121] perfected so that it was possible for accomplishment. Such a plan was at one time suggested during the conferences with the Chief Bank Examiner hereinabove referred to, but it was rejected by defendant Bank and the Chief Bank Examiner in favor of the plan for transferring the frozen assets to a corporation to be organized with capital furnished by the stockholders of defendant Bank.

Second. So far as this defendant has ever been advised, J. E. Wheeler was never willing even to consider turning over his assets for the protection of defendant Bank, or for the benefit of his creditors, until long after the closing of defendant Bank. This defendant did not deter or in any way prevent or dissuade said Wheeler from any such transfer of assets, but, on the contrary, was at all times anxious and willing and often demanded that said Wheeler liquidate his property and assets in any way possible so that his indebtedness to defendant Bank might be paid.

Further answering Paragraph 16 of the bill of complaint, this defendant admits that the officers and directors of defendant Bank caused to be published on March 2, 1927, the announcement quoted on page 22 of the bill, but it is not true that the directors of the Bank left the sole management and control to defendant Price or in any manner ab-

icated their responsibilities as directors. Nor is it true that the run on the Bank, which occurred almost four weeks later, was permitted by defendant Price or any of the then directors of the Bank, or that they refrained from doing everything in their power to prevent it.

The announcement so published on March 2, 1927, resulted from the fact that at that time the directors of defendant Bank having been unable to carry through the plan for the organization of a corporation to take over nonproducing or frozen assets, decided that with the consent and approval of the Chief Bank Examiner, an assessment of 100% upon the [122] capital stock of the Bank should be made, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to defendant Bank of the full amount to accrue from said 100% assessment.

17.

It is not the fact that any secret or undisclosed agreements have been made as alleged in Paragraph 17 of the bill of complaint. The agreements said to have been placed in the custody of James B. Kerr are the agreements already referred to in this answer between defendant Bank and its guaranteeing

stockholders on the one hand and the United States National Bank and the First National Bank of Portland on the other. Said agreements were not kept secret, but, on the contrary, were presented to and duly ratified at a meeting of the stockholders of defendant Bank held May 3, 1927, and said agreements were thereupon spread upon the minutes of the stockholders' meeting of May 3, 1927.

18.

It is not the fact that the directors of defendant Bank made or caused losses to said Bank in two million dollars, or in any sum, nor is it the fact that the directors impaired the capital stock of the Bank or wilfully or intentionally depreciated or destroyed any investment in the stock of the Bank.

19.

It is not the fact that this defendant gave out or published improperly or carelessly or negligently or unlawfully, or at all, any information about the internal affairs of the Bank. [123] It is true that negotiations were had on one or more occasions for the sale and transfer to another bank of the assets, business, and goodwill of defendant Bank, and that the prospective purchaser was given such information about the properties offered for sale as was necessary to the negotiations. But the directors conducting such negotiations acted honestly and faithfully in the interest of defendant Bank and its stockholders, and at no time did they improperly disclose or make public the private affairs

of the Bank or give out any information which in any way worked to the disadvantage of the Bank.

20.

This defendant is ready and willing to disclose any and all facts in their possession which may be relevant or pertinent to any issue herein. But all books and records of defendant Bank are, and at all times have been, open to and available for inspection by the stockholders of defendant Bank, but none of said books or records is in the possession of this defendant.

21.

This defendant admits that defendant Bank is now claiming that complainant is indebted to defendant Bank. Except as thus admitted this defendant specifically denies each and every allegation of Paragraph 21 of the bill of complaint.

Complainant is indebted to defendant Bank in the sum of \$30,000, with accrued and accruing interest. For a number of years prior to July 25, 1927, complainant was indebted to defendant Bank in the sum of \$40,000, and on July 25, 1927, the indebtedness was reduced to \$30,000 by the payment of \$10,000 on account. Defendant Bank has made many demands upon complainant for the payment of this indebtedness but excepting for the payment of \$10,000 so made on July 25, 1927, the principal of said loan has not been reduced but complainant has insisted upon renewals of his notes as they respectively matured. [124] In the report of the examination made by the Chief National Bank Examiner of the Twelfth Federal Reserve District on

October 22, 1926, referred to hereinabove in the answer to Paragraph 12 of the bill of complaint, the indebtedness due defendant Bank from complainant was listed as a nonbankable item, and defendant Bank at that time, and before and after that time, constantly demanded of complainant that this indebtedness be paid. This defendant says that nothing in any of the matters attempted to be set out in complainant's bill justifies complainant's failure to pay his indebtedness to defendant Bank, but that defendant Bank should be permitted, notwithstanding complainant's demands herein, to enforce immediate payment by complainant of the principal and interest of his debt.

22.

The answer made by this defendant to Paragraph 21 of the bill of complaint sufficiently answers Paragraph 22 of the bill. No accounting of any kind is due complainant from defendant Bank or from this defendant, and complainant should not be permitted to use the demands or claims asserted in his bill as an excuse for withholding payment of his overdue obligation to defendant Bank.

23.

For his answer to Paragraph 23 of the bill of complaint this defendant says that the bill is without equity. This defendant and defendant Bank have not at any time refrained, and are not now refraining, from any necessary or proper step for the redress of any wrong done to defendant Bank, but nothing in any of the matters attempted to be stated in the bill justified the charge that this de-

defendant has committed any wrong upon said Bank, and no stockholder, prior to the institution of this suit, has ever made any complaint to defendant [125] Bank, or its directors, of any such wrong, nor has any demand ever been made for the redress of any such supposed wrong.

This defendant denies that he now has or ever has controlled the affairs of the defendant Bank, and avers that at all times in his actions as a director and stockholder he has been faithful to the rights of the Bank and of the stockholders and creditors thereof.

WHEREFORE, this defendant, having fully answered the bill of complaint herein, prays that he be hence dismissed with costs and his disbursements herein taxed against complainant.

D. P. PRICE and
JOHN F. LOGAN,
Attorneys for Defendant.

State of Oregon,
County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 19th day of December, 1927, by receiving a copy thereof, duly certified to as such by John Logan, attorney for defendant Charles A. Morden.

W. C. BRISTOL,
Attorney for Complainant.

Filed December 19, 1927. [126]

AND AFTERWARDS, to wit, on Tuesday, the 27th day of December, 1927, the same being the 37th judicial day of the regular November Term of said court,—Present the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [127]

[Title of Court and Cause.]

MINUTES OF COURT—DECEMBER 27, 1927—
ORDER GRANTING MOTION OF DEFENDANT CHAUNCEY McCORMICK TO QUASH SERVICE OF SUBPOENA AND DISMISS SUIT AS TO HIM.

This proceeding came before the Court on December 19, 1927, upon motion of defendant Chauncey McCormick, appearing specially for the purpose of the motion only, to quash service of subpoena and to dismiss the suit as to him, said defendant appearing by Messrs. James B. Kerr and Charles A. Hart, his attorneys, and complainant appearing by William C. Bristol, Esq., his attorney; and it appearing from the record herein that said defendant Chauncey McCormick is a resident and inhabitant of the Northern District of Illinois, Eastern Division at Chicago, Illinois, and that complainant is a resident and inhabitant of the Western District of Washington, and that the said defendant Chauncey McCormick is not suable in [128] the District of Oregon wherein this suit is brought;

Therefore it is

ORDERED that the motion of defendant Chauncey McCormick be and the same is hereby allowed and that this suit be and the same is hereby dismissed as to defendant Chauncey McCormick.

Dated this 27th day of December, 1927.

R. S. BEAN,
District Judge.

Filed December 27, 1927. [129]

AND AFTERWARDS, to wit, on the 27th day of December, 1927, there was duly filed in said court an opinion, in words and figures as follows, to wit: [130]

In the District Court of the United States for the District of Oregon.

No. E.-8936.

CHARLES A. BURCKHARDT,

Complainant,

vs.

THE NORTHWESTERN NATIONAL BANK,
CHARLES K. SPAULDING, etc.,

Respondents.

No. E.-8939

FRED A. BALLIN,

Complainant,

vs.

THE *NORTHWEST* NATIONAL BANK,
CHARLES K. SPAULDING, etc.,

Respondents.

MINUTES OF COURT—DECEMBER 27, 1927
—OPINION.

Portland, Oregon, December 27, 1927.

Memorandum by BEAN, District Judge.—These suits are brought against the *Northwest* National Bank, formerly doing business here, and the directors thereof for an accounting of the transactions of the bank and its directors, and for a personal judgment against the directors if found to be liable. The plaintiffs are all nonresidents of the district. All the defendants except McCormick are residents of the district. McCormick is a resident of Illinois and was there served with process. He appears specially and moves to quash the service and dismiss the suits as to him on the ground that he is not suable in this district. His objection does not go to the jurisdiction of the court over the subject matter, but to its jurisdiction over him. In other words, the objection is to the venue.

Section 51 of the judicial code provides that except as in the six succeeding sections no civil suit shall be brought in any district court against any defendant by any legal process in any other district

than that of which he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of [131] different states the suit shall be brought in the district of the residence of either the plaintiff or the defendant. The six succeeding sections mentioned have reference to states containing more than one district, or districts containing more than one division, or where receivers are appointed of lands or other property of a fixed character, or suits to enforce legal or equitable liens upon or claims to, or to remove an encumbrance or cloud upon the title of real or personal property within the district in which the suit is brought.

These suits do not come within the provisions of either of these sections. They are not suits to enforce a lien upon real or personal property, or remove a cloud or encumbrance thereon, but are *in personam*. They are therefore governed by section 51. And if jurisdiction is asserted because a federal question is involved McCormick can be sued only in the district of which he is an inhabitant. (Rose's Federal Pro. 280; Macon Gro. vs. At. Coast Line, 215 U. S. 501.) If jurisdiction is founded on diversity of citizenship alone, he cannot be compelled to submit himself to the jurisdiction of this court in a suit brought by a nonresident, by service in the district of his residence. (Camp vs. Gress, 250 U. S. 308; Robertson vs. Labor Board, 268 U. S. 619.)

The motion is therefore allowed.

Filed December 27, 1927. [132]

AND AFTERWARDS, to wit, on the 9th day of January, 1928, there was duly filed in said court, an answer of defendant, Emery Olmstead, in words and figures as follows, to wit:
[133]

[Title of Court and Cause.]

ANSWER OF RESPONDENT EMERY OLMSTEAD.

Now comes the respondent Emery Olmstead, and for answer to complainant's complaint admits, denies and alleges, as follows:

I.

Respondent says that it is true that Charles A. Burekhardt, complainant, is a resident and citizen of the State of Washington, and that Chauncey McCormick is a resident and citizen of the State of Illinois, and that The Northwestern National Bank is an association organized under the laws of the United States for carrying on the business of banking under and pursuant to the statutes, to wit, Section 5133, and other statutes of the kind and character mentioned in complainant's bill.

It is also true that O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metchan, Frederick F. Pittock, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James F. Twohy were and are the directors of the Northwestern National Bank, and that each of them is

a citizen and resident of the State of [134] Oregon.

It is also true that Charles A. Morden, together with O. L. Price are trustees of the H. L. Pittock estate, and that for part of the time mentioned in complainant's bill Charles A. Morden was a director of said Bank and was one of the members of the Examining Committee of said Bank.

It is also true that Emery Olmstead was president of the Northwestern National Bank from some time in 1919 until the last of February, 1927, and in this connection respondent says that on the 28th day of February, 1927, respondent resigned as president and director and the said O. L. Price succeeded him as president of said Bank; that since said time the respondent Emery Olmstead has had nothing whatever to do with The Northwestern National Bank, either as an official of said Bank, or otherwise.

II.

Respondent admits the allegations contained in Paragraphs 2 and 3 of complainant's complaint.

III.

Answering the allegations contained in Paragraph 4, this respondent says that it is not true that he at any time committed any act and/or acts for the purpose of injuring the stockholders, and in this connection respondent says that every act done or performed by him while he was a member of the board of directors, or while he was acting as president, was done for the purpose of benefiting the

Bank and enabling it to pay dividends to the stockholders.

In connection with the allegation in complainant's bill that demand was made upon the directors prior to the institution of this suit, this respondent says that he was not on the board [135] of directors at said time, and was not engaged in directing the affairs of the said Bank.

It is true that complainant is a holder of capital stock of The Northwestern National Bank, and it is true that the said Charles A. Burckhardt, complainant, was not a member of the board of directors at the time of the happening of the affairs delineated in said bill of complaint.

It is not true that this respondent ever at any time dominated or controlled the said Bank, nor is it true that this respondent at any time did anything to injure or destroy the value of the minority stockholders' stock.

Each and every other allegation contained in said paragraph, this respondent specifically denies.

IV.

Answering the allegations contained in Paragraph 5, your respondent says that Charles A. Morden, at one time director and member of the board of said Bank, and O. L. Price, as trustee of the H. L. Pittock estate, controlled seventy-six hundred and ninety-six (7696) shares of the capital stock of said Bank, and that, in addition thereto, O. L. Price personally holds and has under his control two hundred and ninety (290) shares, and that Frederick F. Pittock holds one hundred (100)

shares, and it is also true that Charles A. Morden individually held at one time fifty (50) shares, and that by reason of said holdings Price and Morden control or are in a position to control the said bank.

And in this connection your respondent alleges that in the year 1922, and while Charles A. Morden was one of the trustees of the H. L. Pittock estate and possessed of certain duties in relation to said trusteeship, the said Charles A. Morden sold his fifty (50) shares of stock and resigned as a director and as a [136] member of the Examining Committee; that in connection with his duties while acting on the Examining Committee, the said Charles A. Morden, prior to said time, had occasion to and did pass upon practically all of the loans mentioned in Paragraph 10 of complainant's bill; that by resigning from the Examining Committee and board of directors of The Northwestern National Bank, the said Charles A. Morden refused to perform his duties as required of him by law and under his trusteeship of the H. L. Pittock estate.

V.

Answering the allegations contained in Paragraph 6, your respondent says that it is not true that complainant was solicited by the board of directors of the said Bank to become a stockholder; that it is true that complainant was solicited by a member of the board of directors, to wit, Phil Metschan, and at said time the said complainant was invited to buy shares upon the representation that said Bank was paying dividends, and it is true that complainant paid the sum of thirty-one thousand

two hundred and fifty dollars (\$31,250.00) for stock in the said Bank, and received certificate No. 98 for two hundred and fifty (250) shares of said stock; and in this connection respondent says that at the time said complainant purchased said stock, and for one year thereafter, the said Northwestern National Bank paid dividends, and that said representation in that respect was true.

VI.

Answering the allegations contained in Paragraph 7, this respondent says that it is true that the directors took the oath of office and agreed to conduct the affairs of said Bank in conformity with the law; and in this respect your respondent [137] says that, so far as he was able, he did conduct the said Bank in conformity with the rules and regulations and the law appertaining to National Banks, and that between the years of 1920 and 1926, inclusive, under the management of your respondent, The Northwestern National Bank made in profits a sum in excess of one million four hundred thousand dollars (\$1,400,000.00); that because of the matters and things hereinafter set forth, to which reference is hereby made, the earnings were not used for the payment of dividends, but were used, because of the peculiar situation existing at said time, to take care of losses on what is commonly called "bad loans."

VII.

Answering the allegations contained on Paragraph 8, your respondent says that the H. L. Pit-

tock estate trustees, and those associated with them and identified with them, controlled and directed the affairs of The Northwestern National Bank in the selection and maintenance of the directors and officers of the said Bank.

VIII.

Answering the allegations contained in Paragraph 9, your respondent denies that the capital of said Bank was apparent, and states in this connection that the capital was real, and approximately as alleged in Paragraph 9 of complainant's bill.

IX.

Answering the allegations contained in Paragraph 10, your respondent says that at the time of the happening of the events and transactions narrated in Paragraph 10, or most of them, and particularly in 1918 and 1919 during the World War, your respondent [138] was actively engaged, by and with the knowledge, consent and appointment of the board of directors, in securing business for said Bank, making Eastern connections, and, during the World War, in raising money for the United States Government in that he had charge of all the Liberty Loan drives, including the Victory Loan, five in number, in the city of Portland, Oregon; that your respondent was also Chairman of the War Camp Community Service of the State of Oregon, and also chairman of the committee of fifteen for the development of the West channel of the river and Swan Island and Guild's Lake, a project involving a ten million dollar expendi-

ture; that your respondent during said times also caused to be organized the Columbia-Pacific Steamship Company, which was organized after the war, and which company was developed up to the point where it operated eleven boats running to the Orient out of the city of Portland; that these duties, together with numerous other duties, necessarily demanded of your respondent a great deal of time, and that, by reason of the numerous duties devolving upon your respondent he was not able to give personal attention to all of the loans made by the said Bank, and in order that your respondent might make the necessary connections in a financial way, secure new accounts, and build up the said Bank, there was appointed a number of vice-presidents of said Bank, which appointments were made by the board of directors of the said Bank, and at the same time the said board of directors placed the said vice-presidents in charge of certain loans, giving them full power to investigate the persons or bodies corporate applying for a loan prior to the making of the same; that said vice-presidents were required to report to the board of directors upon the safety of the said loans, and your respondent of necessity had to rely upon such investigations and sworn statements of the applicants for loans; that this method employed by your respondent, and directed by the [139] board of directors, was the usual, ordinary and customary method of handling loans made by banks of the kind and character of the Northwestern National Bank.

That in regard to Item 1, in Paragraph 10, your respondent says that the loan made to the Dufur Orchards Company was originally seventy thousand dollars (\$70,000.00), and that said company owned large orchard tracts near Dufur, Oregon, and that your respondent opposed any further loans to the said Orchards Company; that thereupon a committee was appointed to examine into the affairs of said Orchards Company; that this committee visited the said tract and approved of a loan and/or loans in excess of six hundred thousand dollars (\$600,000.00), in that they recommended that the Bank purchase three hundred thousand dollars (\$300,000.00) of bonds that were in default upon the said property, and thereafter a majority of the board caused to be advanced to the said Orchards Company a total sum of six hundred thousand dollars (\$600,000.00); that your respondent objected to this loan, but was overruled by a majority of the board, and your respondent was compelled to take more than three hundred thousand dollars (\$300,000.00) out of the earnings of said Bank to charge the asset down to where he felt it was safe.

In regard to Item 2 of said Paragraph 10 your respondent says that this was a war loan approved by the board of directors; that it proved not to be good, and in this connection your respondent says that careful investigation was made of the financial standing and plans of the said A. O. Anderson, and that the said loan was made in good faith so far as your respondent is concerned, believing at

the time that the Bank was safe in making said loan; and in this connection your respondent says that he, while acting as president of said Bank, was successful in apprehending A. O. Anderson in the city of New York, and after suit brought in said courts collected [140] a sum in excess of sixty thousand dollars (\$60,000.00), and that said sum mentioned in said complaint should be reduced by said amount.

In regard to Item three, your respondent says that he did not have charge of said loan to A. Rupert & Co.; that the same was handled by other officials of the Bank and after due investigation by them, and that he relied upon the investigation made by the other bank officials. Your respondent admits that said loan was a loss to said Bank.

In regard to Item 4, your respondent says that it is not true that he made this loan, but on the contrary avers that said loan was handled by a vice-president and said business was obtained by said vice-president, and said loan was based upon the statements made by said Bankers Discount Corporation and the investigation of said vice-president, and the same was made in the ordinary course of business so far as your respondent is concerned.

Your respondent says that all of the other items mentioned in said specifications, numbered from 6 to 16, inclusive, were made in approximately the same manner and after due investigation, and in this connection your respondent desires to state that the loan made to J. E. Wheeler was one made

after due investigation; that at the time said loan was made, or shortly thereafter, the said loan was amply secured; that there is now in possession of said Bank security protecting said loan of the reasonable value of a sum of money in excess of six hundred thousand dollars (\$600,000.00); that The Northwestern National Bank had various and sundry guaranties of the said J. E. Wheeler, which guaranties in effect provided that J. E. Wheeler would pay not only his own direct obligations, but all of the obligations of any and all of his companies, including the McCormick Lumber Company, the Wheeler Timber Company, the W. E. Wheeler Estate, and the Telegram Publishing [141] Company, and in this connection your respondent alleges that the statement of J. E. Wheeler in February of 1925, showed assets as follows:

Accounts Receivable.....	\$ 315,000.00
Notes Receivable	456,330.00
Timber stocks, bank stocks, etc.....	4,400,000.00
50% The Portland Telegram.....	400,000.00
60% McCormick Lumber Company...	600,000.00
¼ interest W. E. Wheeler estate,...	1,000,000.00
Real Estate	102,000.00

\$7,273,330.00

and that said statement showed a net worth of more than six million dollars (\$6,000,000.00); that in addition to the statement above delineated, The Northwestern National Bank had statements from the different companies in which J. E. Wheeler was interested showing their net worth, and that the

total net worth of all of the companies in which J. E. Wheeler was interested was in excess of eighteen million dollars (\$18,000,000.00); that your respondent had made some independent investigation of the financial worth of J. E. Wheeler, particularly with regard to the value of his timber holdings, and your respondent had come to the conclusion that the said J. E. Wheeler underestimated rather than over-estimated the value of his different holdings; that a recent statement of the holdings and interests of the said J. E. Wheeler shows that the said J. E. Wheeler, after all obligations of every kind and character are paid, has a net worth of four million six hundred ten thousand dollars (\$4,610,000.00).

That the loan to the McCormick Lumber Company, mentioned in Item 13, has been paid out of a bond issue placed against the property of the McCormick Lumber Company.

That the loan made to the Wheeler Timber Company and the loan made to the W. E. Wheeler Estate have the endorsements of J. E. Wheeler and W. M. Wheeler; that the same are safe loans, and will be paid in full out of the assets of J. E. Wheeler and/or [142] W. M. Wheeler.

That the loan made to the Telegram Publishing Company is endorsed by J. E. Wheeler and L. R. Wheeler, and that there are ample assets to pay said loan in full.

That the following is a personal statement of the interests, and the value of the same, including the liabilities, of J. E. Wheeler:

ASSETS:

Timber Holdings	\$6,102,000.00
Real Estate	75,000.00
Stock in McCormick Lumber Co.....	81,000.00
Stock in Northwestern National Bank	705,000.00
Accounts Receivable due from McCor- mick Lumber Company,.....	1,572,000.00
	<hr/>
Grand Total.....	\$8,535,000.00

LIABILITIES:

Personal	\$1,278,400.00
Telegram Publishing Co.	549,750.00
Bowles judgment	70,000.00
McCormick Lumber Co..	1,572,000.00
Ralph Schneeloch Co....	60,500.00
	<hr/>
	3,530,650.00
Law costs, liquidation and re-adjustment and unlisted liabilities...	194,350.00
Other liabilities.....	200,000.00
	<hr/>
	3,925,000.00
	<hr/>
Surplus,	\$4,610,000.00

That said statement shows that, after all of J. E. Wheeler's obligations have been paid, both contingent and otherwise, he still has for his own estate the sum of four million six hundred ten thousand dollars (\$4,610,000.00); and that the District Examiner of Banks stated to your respondent that he was satisfied that J. E. Wheeler was in a stable financial condition during the years of 1926 and 1927.

Your respondent says that it is true that the Examiner of National Banks asked that Wheeler's lines be reduced, upon the [143] ground that there was too much loaned by said Bank to one person, and to this end your respondent consulted with J. E. Wheeler and L. R. Wheeler, the owners of the Telegram Publishing Company, and at said time, or thereabouts, your respondent succeeded in finding a purchaser, ready, willing and able to purchase the "Telegram" and its plant for the sum of nine hundred thousand dollars (\$900,000.00) cash; that L. R. Wheeler signed a written option to sell the same; that J. E. Wheeler refused to sell the plant for such a price, and thereupon the said J. E. Wheeler consulted with the other members of the board of directors of The Northwestern National Bank, to wit, O. L. Price, Phil Metschan, E. S. Collins, A. D. Charlton and Charles K. Spauling, who were members of the Executive Committee, and notwithstanding the demands of the National Bank Examiner, and notwithstanding the request of your respondent that said "Telegram" be sold and said lines of credit be reduced, each and every member of said committee refused to allow or permit a sale of the said paper; that had said sale been made, the entire indebtedness of the Telegram Publishing Company would have been paid to said Bank, and some four hundred thousand dollars (\$400,000.00) would have been available for the said J. E. Wheeler to pay other obligations of his said companies to the Bank at said time; that it was because of the failure of the directors above named to back

up the request of your respondent that your respondent was unable to reduce the lines of credit enjoyed by J. E. Wheeler and/or his companies.

That in order to comply with the said National Bank Examiner's request, your respondent also tried to negotiate the sale of various timber tracts owned by the said J. E. Wheeler, or in which he had an interest; that because of the lumber conditions then existing, it was difficult and almost impossible to make a sale of the said timber holdings in a short period of time; that [144] had the other members of the board of directors worked with your respondent, a sale of the "Telegram" would have been consummated, and the indebtedness of the said J. E. Wheeler and/or his companies would have been largely paid.

Your respondent further says that it is not true that the Bank was forced into liquidation by reason of said loans, and in this connection your respondent says that said loans were not public property and were not known generally to the public. Your respondent avers that the said Bank was forced into liquidation because of false and malicious rumors about its solvency; that in this connection your respondent says that false and malicious rumors were circulated in and about the City of Portland, causing an unprecedented run upon the said Bank; that during the first day alone of said run the said Bank paid out a sum of money in the approximate amount of three million dollars (\$3,000,000.00) to depositors; that in nine months' time the said Northwestern National Bank has paid out to depositors

eighteen million three hundred thousand dollars (\$18,300,000.00), and that all of said moneys came from the assets of the Bank, and not from any guaranties of any kind or character, and in this connection your respondent is informed and believes, and therefore alleges, that the depositors have been paid in full and that there will be available for the stockholders some two million five hundred thousand dollars (\$2,500,000.00).

X.

Answering the allegations contained in Paragraph 11, your respondent says that so long as he was president of the said Bank, he kept the stockholders informed of the affairs of the said Bank, and did not suppress any information to which the said stockholders were entitled, nor did he suppress any information to which the directors were entitled. [145]

Your respondent says that it is true that Charles A. Morden resigned as director, and admits that Charles K. Spaulding succeeded him, and that thereafter Phil Metschan, Charles K. Spaulding and A. D. Charlton constituted the Examining Committee.

Your respondent says that it is true that the said Examining Committee made one report to the Comptroller of the Currency of the United States and a different report to Mark Skinner, vice-president, and that said report was different in that, among other things, it criticized certain loans or lines of credit, and did not reveal said criticisms to the Comptroller.

Your respondent denies each and every other allegation, specifically and generally, contained in said paragraph.

XI.

In regard to the allegations contained in Paragraph 12, your respondent denies all that portion of the same which has not been alleged or admitted heretofore, and states that he recommended that a new bank be organized, and that to this arrangement the said Bank Examiner agreed and all arrangements had been made to take out of said Bank the slow paper and frozen assets; that all of the stock in the new bank had been subscribed for, and all preliminary action had been taken by the board of directors with the exception of securing a charter for the said new bank; that all of said organization and preliminary matters had been agreed to by all of the members of the board of directors when, without notice or reason of any kind or character, O. L. Price, then controlling the said Northwestern National Bank by reason of his stock, announced that he would not go ahead with the deal; that had said organization of said new bank been made, and the proceedings had as agreed to by the board of directors and as approved by the National Bank Examiner, all of the slow paper and frozen assets [146] would have been placed in a separate corporation, and the new bank would have been able to pay dividends and carry on as a successful banking institution, and neither the depositors' nor any of the stockholders' interests would have been

jeopardized, and no one would have sustained a loss.

That there was subscribed for said new bank the sum of two million dollars (\$2,000,000.00) in capital, and two hundred thousand dollars (\$200,000.00) in surplus.

That your respondent at all the times while he was either president, vice-president or director of said Bank, used all of his knowledge, skill and experience gained over a period of thirty-odd years of banking to carry said institution along in the manner provided by law, and in accordance with good banking system; that for more than ten years your respondent, through acquiring new connections and new business, was able to earn enough to pay dividends every year had not conditions arisen over which your respondent had no control.

XII.

In answering Paragraph 13 your respondent says that he at no time suppressed or concealed from this complainant, or any other shareholder, any of the facts to which they were entitled, and admits that the trustees for the H. L. Pittock estate, and their associates, controlled and managed the said Bank and had the power so to do.

XIII.

Answering Paragraph 14 your respondent says that O. L. Price, L. B. Menefee, R. V. Jones and Guy M. Standifer, through their stock control, did attempt to sell The Northwestern National Bank in 1923 to the United States National Bank, and in

this [147] connection your respondent says that an officer of The Northwestern National Bank, to wit, O. L. Price, prior to the liquidation of the Bank, offered to sell the said Bank to the First National Bank; that all of these matters and things caused rumors and reports to be circulated, or had a tendency to, and hampered and harassed your respondent in building up the said Bank.

That your respondent did not have anything to do with the offer of sale of said Bank at said time, and in this regard your respondent asks that the complainant be required to make proof of the remaining allegations in said paragraph.

XIV.

In answer to Paragraph 15 your respondent says that it is not true that the statement book under "Items in Transit" would show the slow loans; that, on the contrary, said statement book would show every day all out-of-town checks either accepted as cash or sent for collection, so that all checks that went through the Bank, of whatever kind or character, if they were checks on other Banks, would be shown on the statement book under "Items in Transit," and that in this regard times *was* available of and concerning any check of any depositor's account, and that if the other directors of the Bank did not know what checks were in transit, or what checks were accepted for deposit, it was because they did not care to know and refused to be informed.

In other respects, your respondent admits the allegations contained in Paragraph 15, except as the

same is in this answer varied or qualified, and except that your respondent denies that he at any time had any intent, or knowledge of any action by the Board, to impair the assets of said Bank, and in this connection, and by way of explanation of the action of your respondent of and concerning the matters alleged in said paragraph, your respondent [148] alleges that J. E. Wheeler held approximately twenty-three and one-half per cent (23½%) of the stock in The Northwestern National Bank, and that he, the said Wheeler, did have sufficient money, in case said organization described in Paragraph 15 of complainant's complaint was made, to take his portion of the stock to be subscribed for and paid for in the new liquidating company, and in order that this deal might be carried through this respondent secured a purchaser, ready, able and willing to buy the "Portland Telegram" at the price of nine hundred thousand dollars (\$900,000.00), as hereinbefore delineated, and your respondent prays that the explanation of said sale heretofore delineated be read in connection with this paragraph.

XV.

In answer to Paragraph 16, and subheadings "First" and "Second," and the allegations contained in Paragraphs 17, 18, 19, 20, 21, 22, and 23 of said bill of complaint, your respondent says that the matters therein delineated and alleged were matters which happened after he resigned from the board of directors, and after he had resigned as

president, and he has no knowledge of the same, and therefore denies the same, and asks that proof be made of said allegations, and in this connection, in regard to the requests of the National Bank Examiner as alleged in said paragraphs, your respondent says that it is not true that he refused to carry out said deal, but, on the contrary, your respondent urged the board of directors to carry out said deal and stated at said time that it was the only alternative of said Bank and that if said plan was carried out it would meet the approval of the Comptroller and the National Bank Examiner; that notwithstanding the recommendations of your respondent, O. L. Price, afterwards president of said Bank, stated that he had decided not to carry it through; and that [149] it was due to such transactions as this, and the false rumors circulated about said Bank, that the same was forced into liquidation, and not otherwise, and that said Bank was not forced into liquidation because of any precarious condition, as is shown by the matters and things hereinbefore set forth.

WHEREFORE, this respondent prays that complainant's bill may be dismissed, and that he recover his costs and disbursements herein.

SHEPPARD, PHILLIPS & RALSTON,
Attorneys for Respondent, Emery Olmstead.
CHESTER A. SHEPPARD,
Of Counsel. [150]

United States of America,
State and District of Oregon,
County of Multnomah,—ss.

I, Emery Olmstead, being first duly sworn, depose and say that I am one of the respondents in the above-entitled suit; and that the foregoing answer is true, as I verily believe.

(Sgd.) EMERY OLMSTEAD.

Subscribed and sworn to before me this 6th day of January, 1928.

[Notarial Seal]

(Sgd.) WM. C. RALSTON,
Notary Public for Oregon.

My commission expires January 11, 1929.

State of Oregon,
County of Multnomah,—ss.

Due service of the foregoing answer of respondent Emery Olmstead by copy, as prescribed by law is hereby admitted, at Portland, Oregon, this 9th day of January, 1928.

W. C. BRISTOL,
Attorney for Complainant.

Filed January 9, 1928. [151]

AND AFTERWARDS, to wit, on Wednesday, the 11th day of July, 1928, the same being the 8th judicial day of the regular July term of said court,—Present the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [152]

In the District Court of the United States for the District of Oregon.

IN EQUITY—E.—8936.

CHARLES A. BURCKHARDT,

Complainant,

vs.

THE NORTHWESTERN NATIONAL BANK,
CHARLES K. SPAULDING, PHIL MET-
SCHAN, A. D. CHARLTON, E. S. COL-
LINS, CHAUNCEY McCORMICK, NATT
McDOUGALL, FREDERICK F. PIT-
TOCK, MARK SKINNER, CHARLES H.
STEWART, O. L. PRICE, EMERY OLM-
STEAD, JAMES F. TWOHY and
CHARLES A. MORDEN,

Respondents.

MINUTES OF COURT — JULY 18, 1928—DE-
CREE.

This cause came on to be heard on June 18, 1928, at this term, and the Court heard evidence offered on behalf of the respective parties hereto and argu-

ments of counsel; and thereupon, upon consideration thereof, it was ORDERED, ADJUDGED AND DECREED as follows, viz:

That the complainant failed to establish the allegations of his bill of complaint; that said bill is without equity and complainant is entitled to no relief as to the defendants and said bill of complaint and cause of suit as to said defendants is hereby dismissed, and it is

FURTHER ORDERED, ADUDGED AND DECREED that the defendants have and recover of the complainant their respective costs and disbursements herein to be taxed.

Done this 11th day of July, 1928.

R. S. BEAN,
Judge.

Filed July 11, 1928. [153]

In the District Court of the United States for the
District of Oregon.

November Term, 1927.

BE IT REMEMBERED, that on the 10th day of November, 1927, there was duly filed in the District Court of the United States for the District of Oregon, a bill of complaint in words and figures as follows, to wit: [154]

In the District Court of the United States in and
for the District of Oregon.

IN EQUITY—No. E.—8939.

FRED A. BALLIN,

Complainant,

vs.

THE NORTHWESTERN NATIONAL BANK,
CHARLES K. SPAULDING, PHIL MET-
SCHAN, A. D. CHARLTON, E. S. COL-
LINS, CHAUNCEY McCORMICK, NATT
McDOUGALL, FREDERICK F. PIT-
TOCK, MARK SKINNER, CHARLES H.
STEWART, O. L. PRICE, EMERY OLM-
STEAD, JAMES F. TWOHY and
CHARLES A. MORDEN,

Respondents.

COMPLAINT.

Filed November 10, 1927.

To the Honorable Judges of the Above-entitled
Court, in Equity Sitting:

The complaint of Fred A. Ballin, a resident of
the city of Los Angeles in the State of California
and a citizen of said State of California, exhibited
against the above-named respondents, all save
Chauncey McCormick being residents and citizens
of the State of Oregon and the said Chauncey Mc-
Cormick a resident of the State of Illinois, doth for
cause of suit against the above-named respondents
respectfully set forth and show:

Par. 1. That Fred A. Ballin, above-named complainant, and a resident and citizen of the State and District of California in the city of Los Angeles aforesaid is a citizen and resident of a different state than any of [155] the above-named respondents and that there is a diversity of citizenship existing between the complainant and all of the respondents.

That Chauncey McCormick is a resident and citizen of the State of Illinois.

That The Northwestern National Bank is an association under the laws of the United States for carrying on the business of banking under and pursuant to Revised Statutes, Section 5133 and all related sections, defined and designated as Title 12 in United States Code Annotated, as enacted by Congress June 28th, and approved June 30, 1926, and as existing in force December 7, 1925, and prior thereto, with acts amendatory and supplemental thereto and under and pursuant to the laws of the United States in that behalf by Congress ordained and enacted, and during all the times herein mentioned was doing business in the city of Portland and State and District of Oregon and within the jurisdiction of this Honorable Court.

That the respondents O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metschan, Frederick F. Pittock, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James T. Twohy were and are the directors of aforesaid The Northwestern National Bank and still are and remain the

directors, and all of them are and each of them is a resident and citizen of the State of Oregon.

That Charles A. Morden was sometime a director of said Bank and is, together with O. L. Price, trustee of the H. L. Pittock estate, and for part of the time herein mentioned was sometime a director of said Bank, and also or lately was the president, [156] treasurer and manager of Oregonian Publishing Company, a composite part of said H. L. Pittock estate, together with O. L. Price as his cotrustee, and a resident and citizen of the State of Oregon.

That Emery Olmstead was and continued to be after the first of the year 1927 president and director of said Bank, but on or about the 28th day of February, 1927, resigned as president and director thereof and the said O. L. Price succeeded him as president of said Bank, having theretofore been and for some time past lately was chairman of the board of directors of said Bank.

Par. 2. That the amount involved in this suit exceeds the sum of three thousand dollars (\$3,000.00), exclusive of interest and costs.

Par. 3. That the banking laws of the United States, to wit, Section 5147 of the Revised Statutes as amended by the Act of February 20, 1925, Chapter 274, 43 Statutes 955, and now set forth as Section 73 of Title 12 of the United States Code Annotated, and Section 93 of said Title 12 of said code derived from the Act of June 3, 1864, and incorporated in the Revised Statutes as Section 5239,

are part of and involved with the subject matter of this suit.

Par. 4. That this suit is instituted, commenced and prosecuted by the complainant Fred A. Ballin as a stockholder of The Northwestern National Bank upon [157] behalf of himself and all other stockholders of said Bank for that said Bank and its present directors as aforesaid are the persons by and through whom the matters complained about occurred, were occasioned and were committed and for injuries to said Bank and to its said stockholders by the acts of themselves, the aforesaid directors, no one or any of them, nor said Bank, will sue or cause to be sued nor bring to account any one of themselves as between themselves and said Bank or for and on behalf of any stockholder the matters and things complained of herein, although before the filing of this complaint demand was made that they should correct and right the wrongs herein suffered and that said Bank should proceed to enforce the duties and liabilities of said directors herein complained about.

That this complainant was and is a holder of capital stock or of shares of The Northwestern National Bank during the time of the transactions herein complained of and from and after the date of the issuance of the certificate of stock the matters and things complained of occurred down to and inclusive of the present time, and this suit is not a collusive one to confer in a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

That this complainant does not have any influence or voice with other shareholders or directors nor is he in any manner identified with said directors, but all of the said above-named respondents and said Bank are and were opposed during all the times herein mentioned to the conduct of the business of said Bank in a way and manner that would and could have obviated the filing of this suit and would and could have protected [158] the rights of the minority shareholders and protected the property and assets of said Bank, but upon the contrary, the majority of the stock held by the above-named respondents, directors, is wholly adverse to the minority and to this complainant and bent upon carrying out at all hazards the matters and things herein complained about through absolute control, through stock ownership by them, the said respondents, as directors, so that they would and did not respect any demand or request of this complainant and each and every one of said respondents are and were antagonistic to the bringing of any suit and that as stockholders their interests were in every way and are antagonistic to the interests of this complainant, whereby and wherein they attempt to affirm the matters and things done and transacted by them herein complained about, and moreover said respondents and all of them, together with said Bank, although having abdicated control and possession of all assets and gone into liquidation as to all matters, save and except such parts of them as related to the interests of stockholders only and the carrying out of such matters

as said directors themselves wished to affirm, the aforesaid respondents are thus using their position to the injury of this complainant, to the injury of said Bank and to the injury of minority stockholders as herein complained about.

Par. 5. That O. L. Price as trustee of the H. L. Pittock estate and Charles A. Morden as cotrustee of the H. L. Pittock estate, and the said O. L. Price always director and sometime chairman of the board and lately during the [159] year 1927 president of said Bank and the said Charles A. Morden himself at the time a director and a member of the board of said Bank, are possessed and hold as trustees of said H. L. Pittock estate seventy-six hundred and ninety-six (7696) shares of the capital stock of said Bank, in so far as this complainant can obtain any information and if it is otherwise or more, this complainant craves that the records be shown thereabout, and that in addition thereto O. L. Price personally holds and has two hundred and ninety (290) shares, and that Frederick F. Pittock has and holds one hundred (100) shares, and that Charles A. Morden individually had or held fifty (50) shares, but whether he holds them now this complainant does not fully know, but this complainant says that there are approximately eighty-two hundred and eighty-six (8286) shares identified with the trustees of the H. L. Pittock estate and under their domination and control, and if not now there lately was during the time of the matters and things herein complained of and just before the institution of this suit such relationship

of and between themselves and with the other respondents above named that with said eighty-two hundred and eighty-six (8286) shares or thereabouts, coupled with some fifty (50) shares held in the name of Edgar B. Piper, identified with the Oregonian Publishing Company, there is somewhere and about not less than eighty-three hundred and thirty-six (8336) shares under their control alone, and this control and ownership of shares of capital stock of said Bank, taken together with the amounts of shares held and owned and standing in the name of other respondents, to wit, Charlton, Collins, McCormick, or Miami Corporation, whichever it is, controlled by McCormick, McDougall, Olmstead, [160] Metschan, Spalding, Stewart and Twohy, so far as this complainant can ascertain and become aware, comprehends an additional thirty-seven hundred and fifty-one (3751) shares, or more, giving to said respondents, directors, the entire and absolute control of said capital stock and any stockholders' meeting, howsoever called, will be controlled and dominated by their said stock and with their allied and confederated interests to the exclusion of any right expressed or to be expressed by this complainant or any other minority stockholder; and this has been the fact during all the times herein mentioned and still exists as the fact.

Par. 6. That complainant was solicited to be and become by the directors of said Bank a stockholder and complainant was persuaded to purchase and take two hundred (200) shares of the capital stock of said The Northwestern National Bank at a repre-

sented reasonable market value of twenty-seven thousand five hundred dollars (\$27,500.00) on or about the — day of 1923, and received certificates No. 101 for said two hundred (200) shares and

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has ever since been the owner and does now hold and own the same.

That at the time complainant became such stockholder the said directors at and during the times of their solicitation in said year 1923 for this complainant to become a stockholder informed and stated to complainant and represented to him that the condition of said Bank with H. L. Pittock, then living as president and with the Pittock fortune and the influence and prestige of his position and identification [161] in the community, as well as the support of the Oregonian and the Oregonian Publishing Company, gave and made for said Bank an unequalled foundation and support in the community and that its financial condition was good and prosperous.

Par. 7. That all of the directors, respondents above named, qualified and took the oath prescribed by law aforesaid before entering upon their respective duties and responsibilities of their office and promised and agreed with this complainant and all other stockholders and with said Bank, so far as the duty involved upon them or each of them, diligently and honestly to administer and each of them would diligently and honestly administer the affairs of the said The Northwestern National Bank, and that no one of them would and that they would

not knowingly violate or willingly permit to be violated any of the provisions of the National Bank Act aforesaid.

Par. 8. That from the time of the organization of said Bank down to and inclusive of the 29th day of March, 1927, the interest of H. L. Pittock in his lifetime and those identified with him and the trustees of the H. L. Pittock estate, to wit, Price and Morden, and those identified with them of the above-named directors, respondents as hereinbefore set forth, were and continued to be the dominant and controlling factor in said Bank and in and about the conduct of its said business and in the selection and maintenance of the directors [162] of said Bank.

Par. 9. That said Bank commenced business January 2, 1913, with a capital of \$500,000.00 and a surplus of \$100,000.00 and continued with that apparent capital and surplus until on or about the —, day of —, 19—, when its capital stock was increased to \$1,000,000.00 and its surplus to \$200,000.00; and with that apparent capital and surplus it continued down to and inclusive of the 2d day of July, 1922, when it again increased its capital for the third time to \$2,000,000.00 with \$400,000.00 surplus, and continued with this apparent capital and surplus to and until the 30th day of March, 1927; but out of this last increase was taken upwards of three hundred to three hundred and fifty thousand dollars contributed at the rate of \$150.00 per share to be and was charged against and to reduce uncollectible items then due said

Bank with the knowledge, permission and by the act of said respondent directors.

Par. 10. That some time between July 2, 1922, and December 31, 1926, said respondent directors of said Bank knowingly and willingly and with full and complete knowledge and information in respect of each specifically enumerated transaction set forth in this paragraph, so far as complainant can now set forth the same, the facts thereabout being all in possession of said respondents, caused, required and directed to be lost to said Bank in the transactions:

Item 1.	Dufur Orchards Co., in the vicinity [163] of Dufur, Oregon	\$400,000.00
Item 2.	A. O. Anderson & Co.	185,000.00
Item 3.	A. Rupert & Co	200,000.00
Item 4.	Bankers Discount Corporation	150,000.00
Item 5.	Phez Corporation	125,000.00
Item 6.	Rock Creek Ranch, sometimes known as the Creath and Burke transactions coupled with Portland Wool Warehouse	75,000.00
Item 7.	C. J. Smith, S. F. Wilson and M. L. Jones, Olex.	150,000.00
Item 8.	Davin Michellvi Sheep Co.	200,000.00
Item 9.	G. E. Miller & Co.	40,000.00
Item 10.	D. M. Stuart, Timber Dealer	50,000.00

Item 11.	Sam Nemoro, Clothier	30,000.00
Item 12.	J. E. Wheeler	250,000.00
Item 13.	McCormick Lumber Co. . .	150,000.00
Item 14.	Wheeler Timber Co.	90,000.00
Item 15.	W. E. Wheeler Estate	95,000.00
Item 16.	Telegram Publishing Com- pany	125,000.00

and this complainant cannot say and does not know how much more because the facts are in the possession of the respondents, but charges and says that the records of said bank will show substantially as in this paragraph set forth, and that with the knowledge and information and notice to each of the directors thereabouts, coupled with the fact that in the fall of 1925 or thereabouts and since said time, as well perhaps as prior thereto, the Examiner of National Banks in and of the city of Portland, the name of whom is to this complainant unknown, required all of the Wheeler lines to be reduced upon the ground that there was too much loaned by said bank to one person, and said directors there and then with knowledge of that fact agreed that the lines should be reduced, but nevertheless willfully and knowingly violated [164] the requirements of the Examiner, the requirements of the law and did willfully and knowingly cause to be misapplied and lost to said Bank thereby all of its current and proper assets so that it was forced into liquidation on or about the 30th of March, 1927, by said directors.

Par. 11. That part of the transaction set forth in paragraph 10 hereof and indeed the Wheeler

transactions were of record when Charles A. Morden, at the suggestion of O. L. Price, came to be put upon the board of said Bank and was elected a director of said Bank and at that time O. L. Price was chairman of the board and he, Price, then put Morden on the Examining Committee together with Metchan and Charlton, fellow directors, and they, Metschan, Charlton and Morden, ascertained and knew of the condition of said Bank and of said transactions and reported the same to the board and to their fellow directors and all of the directors, respondents, knew sufficient to put an ordinary and prudent business man upon inquiry as to the actual status and relations of the affairs of said Bank, but said directors willfully and knowingly failed and neglected to do or cause to be done any of those things which ordinary prudent and careful men similarly situated in business transactions would do to save and prevent losses and wrong administration of bank and financial affairs, and upon ascertaining the status of said Bank and without informing the stockholders and shareholders situated like this complainant, but suppressing and keeping to themselves and among their fellow directors hereinabove named the said disclosed [165] facts, Morden demanded to be released as a director and resigned as such and that his stock, to wit, fifty (50) shares, be purchased for the sum of sixty-two hundred and fifty dollars (\$6250.00) or thereabouts so far as this complainant can allege the fact to be on information and belief, and believing it to be credible information does say on such belief that

the said Morden was succeeded on said Examining Committee of said board of directors for said Bank by Charles K. Spaulding, one of the directors, and thereafter Phil Metschan, Charles K. Spaulding and A. D. Charlton, the last of whom had been a director since the organization of said Bank, constituted said Examining Committee for said board of directors, and they down to and including the time when Morden left and resigned to the year 1927 made examinations and reports of affairs of the Bank and reported to the board of directors and advised and informed their fellow directors of, in and about all of the same, and did make one report to said directors which was a confidential or private or secret report, original of which was given to Mark Skinner, vice-president, and copies to other officers and directors and kept in the files of said Bank, whereas another and different report was made to the District Bank Examiner and likewise to the Comptroller of the Currency of the United States in such way and manner that the private report would show the real and true condition of said Bank, while the report to the District Bank Examiner and Comptroller of the Currency would show a favorable, but incorrect condition of said Bank, and that if said reports were produced in this court this complainant charges they will show as herein alleged, and that these directors hereinbefore named did during the year 1926, did during the year 1925, and did [166] during the year 1927, and for aught this complainant knows many times prior thereto, suppress and conceal and know-

ingly prevent share and stockholders, like this complainant and others not on the board of directors likewise stockholders, and officials of the United States Government in that behalf given the privilege of law so to know, the real and actual condition of said Bank and its affairs.

Par. 12. That in addition to said Examining Committee there was an executive committee of seven (7) directors and so far as this complainant can inform the Court there were meetings of the whole board in each month and when the whole board met they approved the actions of the executive committee and also of the Examining Committee, and said whole board consisted of the respondents named individually in the caption of this complaint, and the Examining Committee reported to the board every six months, and the executive committee during these periods consisted of O. L. Price, chairman and chairman of the board, A. D. Charlton, Charles K. Spaulding, Phil Metschan, Frederick F. Pittock, Mark Skinner and maybe some others, but at least those, and the complainant alleges that it should and probably did include Emery Ohnstead as one of the members of said executive committee, and in addition to the information conveyed to said board of directors of said bank by its said committees there was an Examiner's report made on or about the 26th day of November, 1926, directing that all slow and doubtful paper be taken up and retired and a segregation of undesirable assets amounting approximately to one million five hundred thousand dollars [167]

(\$1,500,000.00) or thereabouts, with items directed to come out of some seven hundred and fifty thousand dollars (\$750,000.00), with reductions required in uncollectible credits of some five hundred thousand dollars (\$500,000.00), and that there should be immediately retired some two hundred and fifty thousand dollars (\$250,000.00) of slow and doubtful paper, and so far as this complainant can say and allege each and every one of said respondents individually named in the caption hereof as directors of said bank at said time knew and were familiar with the aforesaid condition of said bank and that their acts and doings over and during the period from the time of the increase of the capital stock of \$2,000,000.00 down to and inclusive of March 30, 1927, caused the liquidation of said bank and it to go out of business with consequent loss, damage and liability to its stock and shareholders as herein shall more fully appear.

Par. 13. That during all this time and between said periods aforesaid said directors suppressed and concealed from this complainant and other share and stockholders of said bank other than themselves, the said directors, in the interest of whom they were allied as aforesaid, all facts and circumstances connected with their transactions and with said bank and gave no information, knowledge or notice to said share or stockholders whereby they might or could have protected themselves and their credit in and about transactions with said Bank, and such stockholders' meetings as were had were always controlled and antagonistically manipulated

by those who were as hereinbefore alleged in possession of the majority and nearly [168] two-thirds of the stock and with the assistance of their friends practically all of the stock except for a few minority stockholders like this complainant and therewith in entire control of said bank.

Par. 14. That in the year 1923 and notwithstanding that at that time J. E. Wheeler, Wheeler estate, Wheeler Timber Company, Telegram Publishing Company and other allied Wheeler interests were, as far as this complainant can ascertain, indebted to this bank in the sum of approximately six hundred thousand dollars (\$600,000.00), and the said board of directors of said bank, the respondents above named, and those acting with them at that time, permitted and allowed, when they willfully and knowingly knew and had ascertained that said bank was then under consideration of being sold and disposed of by O. L. Price, L. B. Menafee, R. V. Jones and Guy M. Standifer, through stock control, to The United States National Bank, hereinafter mentioned, in the city of Portland, Oregon, unless as they, the said board, permitted and caused and allowed to come about said J. E. Wheeler, then so indebted to said bank, should purchase or arrange credit to purchase from the said Guy M. Standifer, L. B. Menefee and R. V. Jones forty-two hundred (4200) shares of the capital stock of said bank at one hundred and fifty dollars (\$150.00) the share or a total of six hundred and thirty thousand dollars (\$630,000.00), and so far as this complainant knows or can ascertain and so

inform the Court, this complainant causes your Honors to know and to be advised and informed that said O. L. Price and his fellow directors connived, permitted, allowed and acknowledged the purchase and the arrangement of the credit [169] for the purchase by said J. E. Wheeler of all of said shares at said price of one hundred and fifty dollars (\$150.00) per share, to wit, the said forty-two hundred (4200) shares, and ever since said time and now, so far as this complainant knows, the said J. E. Wheeler has been carrying said shares as share and stockholder of said bank and some forty-seven hundred (4700) shares thereof stand as shareholder in his name, and if the records of said bank are produced and shown herein it will be and appear that the transfers of said stock from said Menefee and from said Jones and from said Standifer were so made and have so remained from the time of such transfer to the present time to the knowledge, notice and information of all of said directors of said bank, and this complainant doth thereabout charge and allege the fact to be that said directors permitted the sale and transfer of said shares at one hundred and fifty dollars (\$150.00), and after demanded to repurchase the same at ten cents (10¢), a share without regard to the interest of any other stockholder or shareholder as at that time, and without regard to the interests of this complainant, notwithstanding the matters and things set forth in paragraph 9 hereof; and that each of these things happened, occasioned and were done to the impairment of the bank's condition and

the destruction of its capital stock values by and with the knowledge, action, direction and consent of said above-named directors, respondents herein, as hereinafter alleged.

Par. 15. That in the latter part of 1925 and the fore part of 1926, say about the month of February, 1926, the [170] directors of said bank, the respondents named herein, were informed and aware of a means, method and manner whereby the "Telegram" of the Telegram Publishing Company owned and controlled by J. E. Wheeler or those associated with him, might be sold for a definite and certain ascertained price sufficient to liquidate the larger part of the indebtedness of Wheeler and his allied institutions to the bank and documents were prepared for signature and presented to the said Wheeler who thereabout consulted, as near as this complainant can ascertain and is informed and believes the fact to be, directors Metschan, Spaulding and Charlton and also Morden and also Collins and also Price, and notwithstanding the deal for the sale of the paper was firm and could have been made, said directors so consulted opposed the same and would not allow said paper to be sold in order that the proceeds therefrom might be covered into said bank in discharge of the moneys owed by said Wheeler, and all of said directors, as well as the respondents named, knew and were informed of said transaction and of the refusal to carry it out in February, 1926, whereby there would and could have been saved to the bank a very great deal of the money advanced to said Wheeler and his associated companies and

a large and wholesome reduction made in what was known as the Wheeler lines, but said directors utterly failed and willfully refused to so transact the business of said bank and declined to allow said paper to be sold and the net proceeds in cash covered into said bank.

Par. 16. That during the years 1925 and 1926 and in the course and practice of said bank there was kept a daily [171] position or statement book showing each day's previous business wherein "Items in Transit" were treated as cash and were included in reserve calculations as against deposits and each and every one of the directors named herein, to wit, Charles K. Spaulding, Phil Metschan, A. D. Charlton, E. S. Collins, Chauncey McCormick, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price, Emery Olmstead, James F. Twohy and Charles A. Morden, saw, knew what was in said bank, read it, and understood what it meant and discussed the amount of the same and were informed by the Bank Examiners and by the Comptroller of the Currency, and particularly was O. L. Price, Charles H. Stewart and Phil Metschan, who went to see the Comptroller in the city of Washington, D. C., advised and informed and thereby knew how large the sums had been that had been charged off and how stupendous were the transactions representing the impairment of the bank's assets and capital and that the Comptroller advised and required that a million dollars in cash be supplied and be taken out of as, of and upon a plan through a holding company or by the

use of what is known as a liquidating organization in connection with said bank so that the cash might be supplied for the slow and doubtful items caused by the management of said directors and said bank put upon a current condition and that if this were done and the necessary money contributed the said board of directors would be authorized to pay dividends in the spring of 1927, and thereupon said directors of said bank set about a proposal to raise seven hundred and fifty thousand dollars (\$750,000.00) by each stockholder putting up thirty-seven and 50/100 dollars (\$37.50) based upon said twenty thousand (20,000) shares and seven hundred and fifty thousand dollars (\$750,000.00) [172] to be bonded and retired making possible the reconstruction suggested by the Comptroller, but said directors knowingly, willfully and intentionally failed and refused to comply with the directions on request of said Comptroller in that behalf, and nevertheless continued to accommodate the said J. E. Wheeler based upon his endorsement with loans passed on by said directors arising and during and continuing through the fall of the year 1926 and into the year 1927 in violation of the National Banking Act wherein it is provided that the total of such liabilities shall in no event exceed thirty per cent of the capital stock of the association, which would have been not more than six hundred thousand dollars (\$600,000.00), to increase and multiply to the sum of six hundred and thirty-four thousand dollars (\$634,000.00) or more, so far as your complainant is informed and believes, including the

Telegram Publishing Company for some \$120,000.00, J. E. Wheeler individually for some \$234,000.00, Wheeler Timber Company for some \$95,000.00, W. E. Wheeler estate for another \$95,000.00 and W. M. Wheeler, by way of acceptances, in the sum of \$90,000.00 or over, all, it is true, guaranteed by the said Wheeler, but composing and comprising more than thirty per cent of the capital stock of the association at that time, and if there was included in the liability of either company or firm the liabilities of the several members thereof it will upon accounting and production of records of said Bank and of said directors be and appear that the same exceeded at all times the amounts allowed by law to the knowledge of said directors and with the willful intent and knowledge of said directors to impair, and they did impair, the assets of said bank. [173]

Par. 17. That on the turn of the year 1927 these aforesaid directors, respondents above named, and in the matters and things hereinbefore alleged continuing and still continuing to do and transact the business of said bank in said manner, allowed and permitted the said bank under their control and direction to get into financial difficulties so that it could not pay its depositors and exposed its stockholders and shareholders to be and become liable over, including this complainant, to assessed liabilities or to liabilities to undertaking banks, to wit, The United States National Bank and the First National Bank, both of the city of Portland, by some time or in some manner to this complainant

unknown, and about February, 1927, leaving the management and direction and the affairs of said bank entirely in the charge and management of O. L. Price, having on or about the last of February or the first of March, 1927, elected him president, and notwithstanding that at or about that time or in the month of February all of said directors had before them plans and proposals upon which had they acted they could have saved said Bank and its assets and prevented its liquidation in this, to wit:

First. That a plan was formulated whereby all stockholders not consenting could have been paid and retired and more than two-thirds were willing, capable and ready and had signed up and executed the plan so to do, that is to say, change said Bank into State Bank and Trust Company with a capital stock sufficient to preserve all of its assets, retire all of its unbankable or disallowed items, and said O. L. Price [174] and those acting with him agreed to said plan, executed the preliminary papers therefor and for the organization of said bank in said manner and said directors agreeing thereto and the necessary amount of stock and money was fully subscribed and complete, and yet the said Price and the said directors acting under his dominance and control refused to carry out and accomplish the said plan and disregarded it entirely and failed and neglected to observe the suggestions of the Comptroller and Bank Examiner as to the necessities of the situation by so refusing,—

Second. That at or about this time the Telegram Publishing Company and some of the Wheeler

institutions became involved in legal proceedings or were threatened therewith and it was brought about that J. E. Wheeler for the further security and protection of said bank was prevailed upon to turn over and entirely divest himself of, for the full protection of the stockholders of said Bank and its depositors and this complainant, all of his properties, including said Telegram and his interests in California, Oregon and elsewhere, to the full payment and satisfaction first of all of his indebtedness and obligations to said bank, but said directors, particularly Metschan, Collins and Price, refused to consider or permit the paper known as the "Telegram," published by the Telegram Publishing Company, to be sold or disposed of and refused to consider or consent to the transfer by Wheeler of assets and property sufficient to cover the whole transactions of the said Wheeler and his companies with said bank and entirely disregarded their aforesaid duties as herein alleged to said bank as said directors under [175] their said several oaths and sat by and did nothing, so far as this complainant is informed and believes and therefore he alleges the fact to be, until the Telegram Publishing Company virtually went into Bankruptcy or was thereabout so to do and Wheeler involved by the rejection of said directors and their said negligent acts and doings in refusing and failing as they then could have done to take over all of the assets of said Wheeler, including said paper, and save loss to said bank.

And so it was that on or about the 2d day of

March, 1927, the officers and directors of The Northwestern National Bank caused to be published on the first page of the "Morning Oregonian" and given out a statement as follows:

"The Northwestern National Bank announced that the Pittock estate has acquired a larger measure of interest and control in the bank corporation. Associated with the Pittock estate in ownership and operation of the bank are Messrs. E. S. Collins, A. D. Charlton, Chauncey McCormick, Natt McDougall, Phil Metschan, Frederick F. Pittock, O. L. Price, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James F. Twohy, directors, all well known in Portland and the northwest as men of affairs.

O. L. Price has been elected president of the bank and will have active charge of its business. It will continue to serve the public as a financial institution of first importance and known responsibility."

pursuant to which the said named persons, who are the same identical named persons herein named as respondents and as directors of said bank, left the said Price as president of said Bank and director in virtual and sole management and charge thereof and he, the said Price, with the connivance, consent and willingness of said [176] board of directors to abdicate its responsibilities and duties thereabout caused to be made an agreement with the Portland Clearing House and through it with

The United States National Bank and the First National Bank, both of Portland, Oregon, wherein and whereby all matters and things pertaining to the banking business and the conduct of it in the city of Portland by The Northwestern National Bank, without the consent at that time of the necessary two-thirds under the law of shareholders, including this complainant, was lost and utterly destroyed and at the same time the shareholders and stockholders of said The Northwestern National Bank, including this complainant, thereby subjected to each and every liability to the undertaking banks that may have been or could be said to have been created by the said Price and those directors acting with and about him in that matter, for that said Price and said directors then and there permitted, to wit, in the month of March, 1927, a run upon said bank, being fully advised and informed how they might have prevented the same and how they could have taken steps to have avoided the same, but they, the said Price and his accompanying directors, although fully aware and well advised and informed of the situation, refused and failed to act or do anything to the prejudice and loss of this complainant and all other stockholders of said bank.

Par. 18. That said directors and Price with other officers of said Bank during said times and in the month of March, 1927, made some secret and undisclosed agreement, placed in charge of and with James B. Kerr and by him locked and kept or by someone under his or [177] their direction in a box or vault in Security Savings & Trust Com-

pany in the city of Portland, Oregon, wherein and whereby certain terms and conditions of transfer to said underwriting banks, to wit, The United States National Bank and the First National Bank, both of Portland, Oregon, is set forth with the liabilities and responsibilities involved involving the share and stockholders of said Bank, and this complainant prays disclosure of said agreement so that your Honors may be and become informed thereabout for that said agreement affects the present doing of said directors and disclosed to the stockholders other than themselves, and affects the rights of and state of said Bank in which complainant as shareholder and all other stockholders similarly situated are interested.

Par. 19. That up to the time the Bank closed in March, 1927, the losses made by said directors, so far as this complainant can specify, amounted to more than two million dollars and impaired the capital stock of said Bank, and willfully depreciated and intentionally destroyed the investment of moneys of this complainant therein made as aforesaid.

Par. 20. That up to the time said Bank closed its doors and its banking business was transferred to the aforesaid named Banks said directors, respondents above named, did negligently, carelessly and unlawfully disclose, give out and publish, and were negligently, carelessly and unlawfully disclosing, giving out and [178] publishing private records and affairs to said competitive Banks, to wit, The United States National Bank and the First National Bank, and to the directors of them the said

competitive Banks in the city of Portland in such way and manner as to expose, publish, announce and disclose all of the internal affairs, the loans and discounts, the transactions had and held of The Northwestern National Bank so that in the months of February and March, 1927, before said Bank disclosed it, it became and was by said acts the object of suspicion, rumor and belief, giving rise to that want of confidence and there came about a want of confidence from said cause in the public mind that impaired the credit, impaired the standing, and impaired the worth and facilities of said bank as a banking association, although if said directors had done and performed their full duty to said Bank and its shareholders as required by the Bank Examiner and Comptroller and had lived up to the promises that they had made, no consequence would have befallen said banking business, and this complainant charges said directors and the aforesaid acts to be the cause of the ruin, wreck and disaster to said Bank and of the loss of the then banking business without any compensation whatever.

Par. 21. That this complainant is unable to specify with more particularity and certainty or definiteness the matters and things herein complained about at this time, but prays the disclosure of, from and under the power and jurisdiction of this Court of all the facts and circumstances for that the records thereof and the transactions and papers and documents in respect thereto [179] are in possession of the respondents and not of this complainant, and each and every one of said

respondents including said Bank substantially know in detail and at all times knew in detail of the matters herein charged and specified.

Par. 22. That defendant Bank through Mark Skinner, its vice-president, is now claiming against this complainant that certain moneys now are payable by this complainant to said Bank notwithstanding the wrong and injustice done to complainant by said Bank and by its said directors aforesaid, and they and said Bank and said Skinner are threatening and intending to enforce against complainant payment of said moneys claimed payable, but if an accounting were had between said bank, said directors and complainant, it would and will be found that there is more in right, equity, and justice payable to complainant than to any or either of the respondents herein; and that upon such accounting it would be found and appear that said respondents ought of right, justice and equity pay all such amounts whatever as were wholly lost to shareholders of said Bank, including this complainant, by their actions and conduct aforesaid over and above any just credit or offset whatever, and that against complainant there is no sum or amount payable to said Bank or said directors for said Bank or themselves whatever for that complainant signed no waivers or agreements or ever became in any way a part to the doings of said respondents or gave any consent or assent whatever thereto. [180]

Par. 23. This complainant further charges that the accounts in respect of the above-mentioned transactions and dealings are still open and unset-

tled and that if the account between complainant and respondents were properly taken a considerable balance would be coming from the respondents to your complainant and that said accounts or accounting cannot be properly had or taken in any other court but this wherein the respondents can make a full and true discovery and disclosure of and concerning all and singularly the transactions and matters aforesaid, so that an accounting may be taken by and under the direction and decree of this Honorable Court of all dealings and transactions between this complainant and the said respondents; that in equity and good conscience the respondents should not be allowed to charge complainant with any sums of money, but that on the contrary the respondents ought to be charged in equity with all benefit and advantage wrongfully derived or comprised in the losses hereinabove alleged as against this complainant and to specify and show all of the same, your complainant being ready and willing to submit if it should be found to the contrary to pay any balance that might be properly, equitably and justly by this Court in consonance of its course and practice found to be due if any if it should be over and above the amount lost to complainant as hereinbefore alleged in the acts, doing and transactions of said respondents; that in the meantime the respondents and all of them should be restrained and enjoined by an injunction of this Honorable [181] Court from the continuance, accomplishment, execution or carrying out the wrongful and improper acts entered into and carried on as aforesaid and as herein specified

and described, and from in any manner proceeding against your complainant or doing otherwise than to submit themselves to and unto this Court as by due process in equity they should account.

Par. 24. Forasmuch as said Bank and said respective respondents, directors, will not call to account nor sue or prosecute for the many causes, acts and things herein complained about by or among themselves injuring said Bank, or call each other to account in behalf of said Bank and its shareholders and this complainant and of all other stockholders of said Bank, this complainant is remediless in the premises, all things considered, and wholly without adequate or any remedy, speedy, sufficient, or complete at law in this or any other court or anywhere, as now and during all of said times the above-named respective respondents are in full possession, control and domination of the remaining affairs and/or property of whatever it may be of said Bank or of said association or Bank and are claiming the right to continue to conduct the same agreeable to their own interests, their own resolves, and in perpetuation of the injustice, wrong, and the losses hereinbefore recited; and without the intervention and exercise of the jurisdiction of this Honorable Court in equity according to its due and proper course and practice in such cases complainant cannot have or obtain, nor can all other stockholders have or obtain [182] any competent, complete, speedy, sufficient or adequate relief whatever, and if said respective respondents continue or are allowed to continue as they are now

doing and continuing to do in the exercise of the corporate powers vested in said banking association, complainant and all other stockholders may and in all likelihood will loose their entire investment and be and become subjected to liability as hereinbefore set forth beyond and over to the aforesaid undertaking Banks unless said respective respondents are restrained, enjoined and prevented from continuing their careless, neglectful, wrongful and undutiful financial career aforesaid.

WHEREFORE, complainant prays your Honors to consider and pronounce upon the premises aforesaid, to require the account to be made and stated, to restrain and enjoin the respondents from further acts, doings or proceedings by themselves, their agents, servants, attorneys or employees of and from any act whatever to the prejudice of this complainant or any other stockholder and to desist from the acts, doings and matters herein complained about or any furtherance or further acts in or about the same or in pursuance thereof and wholly to refrain and desist from any matter or thing whatever in pursuance or furtherance of the matters complained about, and that this Court hear and determine the facts herein and decide and adjudge whether and to what extent and whom shall be held and adjudged liable and responsible for the losses and impairment sustained by complainant and all other stockholders of said Bank.

That the said respondents may set forth a [183] list or schedule and description of every deed, book, account, letter, paper or writing relating to the

matters aforesaid, or any of them, or wherein or whereupon there is any note, memorandum, or writing relating in any manner thereto, which now are, or ever were in their, or either and which of their, possession, or power, and may particularly describe which thereof now are in their, or either and which of their possession or power, and may deposit the same with the clerk of this court for the usual purposes, and otherwise that the said respondents may account for such as are not in their possession or power.

And may it please your Honors to grant unto your orator a writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said respondents, commanding them and each of them, on a day certain and under a certain penalty, in the said writ to be inserted, personally to be and appear before your Honors in this Honorable Court, and then and there full, true and perfect answer make, to all and singular the premises, and further, to stand, to perform, and abide such further orders, direction and decree therein, as to your Honors shall seem meet and shall be agreeable to equity and good conscience.

And that complainant have such further, different, other, additional and also general relief and decree as may be in accordance with the facts and proof in equity cases according to the course and practice of this Honorable Court, with costs.

FRED A. BALLIN,
Complainant.

W. C. BRISTOL,
Solicitor and Attorney. [184]

United States of America,
State and District of California,
County of Los Angeles,—ss.

I, the undersigned, Fred A. Ballin, being first duly sworn on oath depose and say: That I am a resident and citizen of the city of Los Angeles, in the State of California; that I am the complainant named and described in the foregoing bill of complaint; that I know the contents thereof and as to all matters of fact therein stated I believe the same to be in all respects true, and as to all matters therein stated on information and belief so far as the knowledge of this complainant in acquiring said information and belief goes or was had or is possessed, the facts so stated on information and belief are from reliable sources and true as I believe; that the matters and things set forth in said bill of complaint are largely in possession of the respondents themselves and that this complainant verily believes the matters and things set forth are the true state of facts in every respect so far as they have come in any wise to the knowledge of this complainant, and that upon proper order of this Court if the respondents are required to disclose and answer make it will be and appear that the facts stated are in accordance with the records and transactions that are prayed to be deposited in this court as part of this bill of complaint as set forth in the prayer thereof.

FRED A. BALLIN.

Subscribed and sworn to before me this 7th day of November, 1927.

[Seal] DOLORES BINGHAM,
Notary Public for California, Residing at Los Angeles.

My commission expires Sept. 12, 1928.

Filed November 10, 1927. [185]

AND AFTERWARDS, to wit, on the 30th day of November, 1927, there was duly filed in said court, a motion of defendant Chauncey McCormick to quash service of subpoena ad respondendum in words and figures as follows, to wit: [186]

[Title of Court and Cause.]

MOTION TO QUASH SERVICE OF SUBPOENA AND TO DISMISS THE SUIT AS TO THE DEFENDANT CHAUNCEY McCORMICK.

Now comes Chauncey McCormick, named as one of the defendants in the above-entitled suit, and enters his appearance therein specially for the purpose of this motion and not otherwise, and moves for an order setting aside the alleged service of subpoena and complaint upon this defendant and dismissing the suit as to this defendant upon the ground and for the reason that the Court has no jurisdiction and that this suit is not a suit of local nature and this defendant cannot be sued therein in the Dis-

trict of Oregon for that this defendant is a citizen, resident and inhabitant of the Northern District of Illinois, Eastern Division at Chicago, Illinois, and not of the District of Oregon. This motion is based upon the records and files of the [187] court in this suit and upon the affidavit of J. G. Fleck hereto attached.

CAREY and KERR, and
CHARLES A. HART,

Attorneys for Defendant Chauncey McCormick
Appearing Specially for the Purpose of this
Motion. [188]

[Title of Court and Cause.]

AFFIDAVIT OF J. G. FLECK.

State of Oregon,
County of Multnomah,—ss.

I, J. G. Fleck, being first duly sworn, on oath say that I know Chauncey McCormick named as one of the defendants in the above-entitled suit and have been well acquainted with him for several years past. I know that he resides in the city of Chicago, Illinois, and is a citizen of that state. He has never resided within the District or State of Oregon and is not a citizen of that state.

J. G. FLECK.

Subscribed and sworn to before me this 30th day of November, 1927.

[Notarial Seal]

PHILLIP CHIPMAN,
Notary Public for Oregon.

My commission expires August 28, 1931. [189]

District of Oregon,
County of Multnomah,—ss.

Due service of the within motion is hereby accepted in Multnomah County, Oregon, this —— day of —— 192— by receiving a copy thereof, duly certified to as such by Charles H. Carey, of attorneys for defendant.

W. C. BRISTOL.
By F. E. GRIGSBY,
Attorney for Plaintiff.

Filed November 30, 1927. [190]

AND AFTERWARDS, to wit, on the 17th day of of December, 1927, there was duly filed in said court, an answer of the defendants Northwestern National Bank, A. D. Charlton, E. S. Collins, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price, and James F. Twohy, in words and figures as follows, to wit: [191]

[Title of Court and Cause.]

ANSWER OF DEFENDANTS, THE NORTHWESTERN NATIONAL BANK, A. D. CHARLTON, E. S. COLLINS, NATT McDUGALL, FREDERICK F. PITTOCK, MARK SKINNER, CHARLES H. STEWART, O. L. PRICE AND JAMES F. TWOHY.

Now come the defendants, The Northwestern National Bank, A. D. Charlton, E. S. Collins, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price and James F. Twohy, and each severally and not jointly answering the bill of complaint herein, do say:

1.

These defendants have no knowledge as to the present residence or citizenship of complainant. At the time he became a stockholder in defendant Bank, and for a number of years thereafter, he was a citizen and resident of Oregon and these defendants are not advised as to the claimed present residence and citizenship and the diversity of citizenship asserted as a result thereof.

Defendant Chauncey McCormick is a resident and citizen [192] of the State of Illinois.

Defendant The Northwestern National Bank is a national banking association organized under the banking laws of the United States and doing business in the city of Portland, Oregon.

Defendants O. L. Price, A. D. Charlton, E. S.

Collings, Natt McDougall, Phil Metschan, Frederick F. Pittock, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James F. Twohy are and for a number of years last past have been directors of defendant The Northwestern National Bank, and each was and is a citizen and resident of Oregon.

Defendant Charles A. Morden is a citizen and resident of Oregon, and he was at one time a director of defendant The Northwestern National Bank.

It is true that defendants O. L. Price and Charles A. Morden are trustees under the last will and testament of Henry L. Pittock, deceased, and that defendant Charles A. Morden is an officer of Oregonian Publishing Company, a corporation, but these defendants aver that neither of said facts is in any respect pertinent or material to any issue herein. These defendants believe that the reference to said facts in complainant's bill is for some ulterior purpose and constitutes impertinence, and these defendants pray that it be stricken from the bill.

Defendant Emery Olmstead was, prior to March 1, 1927, president and a director of defendant Bank. On that day he was succeeded as such president by defendant O. L. Price, who theretofore had been chairman of the board of directors of defendant Bank. [193]

2.

These defendants are unable to determine from the bill of complaint herein what amount, if any,

is involved in this suit; and they leave complainant to his proof of the allegation that a sum in excess of \$3,000.00 is involved.

3.

These defendants are unable to determine from the bill of complaint herein whether the banking statutes referred to in Paragraph 3 of the bill are, as there asserted, a part of and involved with the subject matter of this suit, and leave complainant to his proof of that allegation.

4.

It is not the fact that any wrongs have been committed against the defendant Bank for which these defendants, who are directors, have at any time been unwilling to seek redress. On the contrary, these defendants, and each of them, at all times have been ready and willing, and now are ready and willing to sue and to call to account any and all persons or parties in any manner responsible for wrongs to defendant Bank.

It is not the fact that before the filing of the bill of complaint herein any demand was made upon defendant Bank or upon these individual defendants as its directors, to correct or right the matters referred to as wrongs in the bill of complaint; on the contrary, neither complainant, nor any stockholder of defendant Bank has at any time made any complaint, charge, or statement to defendant Bank or any of its directors, that any such alleged wrongs, had been suffered; nor has any complainant or any stockholder ever demanded or requested

that any step of any kind be taken to redress such supposed [194] wrongs or to enforce any duties or liabilities of these individual defendants as directors of defendant Bank.

Complainant is not in fact a stockholder of defendant Bank. As will be more fully stated hereinafter in this answer, complainant more than a year prior to the filing of this suit assigned and caused to be transferred to Francis P. Graves & Company, of Los Angeles, California, all of the shares of stock in defendant Bank then held by him, and since that time complainant has not been and is not now a stockholder of defendant Bank.

Complainant is not and for more than a year prior to the institution of this suit, has not been, a stockholder of defendant Bank, but if the allegations of Paragraph 4 of the bill of complaint are to be construed as asserting that the owner or owners of the stock formerly held by complainant have not at all times enjoyed each and all of the rights vested in them as stockholders, these defendants deny the charge. The allegations that these individual defendants through majority control of stock were or are adverse or antagonistic to complainant or any stockholder, and were or are attempting through such control to carry out a plan designed to injure defendant Bank and its minority stockholders, and each and all of the statements and insinuations of the last subparagraph of Paragraph 4 of the bill of complaint, are without any foundation in fact and are wholly false and untrue.

5.

These defendants deny that at any time in the entire history of defendant Bank there ever existed any such combination between these individual defendants for the control of [195] the stock of defendant Bank as is alleged in Paragraph 5 of the bill of complaint. It is true that the estate of Henry L. Pittock, of which defendants O. L. Price and Charles A. Morden are trustees, is and for several years last past has been the owner of 7,696 shares out of the total 20,000 shares of stock outstanding, and that defendant O. L. Price individually owns 290 shares and that other individuals and corporations own and hold shares of stock substantially to the number stated in Paragraph 5 of the bill of complaint, except that defendant Charles A. Morden has not been the owner of any shares of stock in defendant Bank since the year 1922. But no combination or confederation for the domination through control of a majority of the stock of defendant Bank has ever existed between these individual defendants, or any of them, or between them or any of them and Edgar B. Piper or the Miami Corporation or any other stockholder. The allegations of Paragraph 5 of the bill of complaint with respect to such combination and control are without foundation in fact and are wholly false and untrue.

6.

Complainant, Fred A. Ballin, became a stockholder of defendant Bank on July 29, 1918, by the acquisition of 100 shares and thereafter and on July 1,

1922, he acquired an additional 100 shares. He continued to be such stockholder until October 18, 1926, at which time all of said stock was assigned and transferred and new certificates issued therefor to Francis P. Graves & Company of Los Angeles, California.

The allegations of Paragraph 6 of the bill of complaint to the effect that representations were made to induce complainant to acquire stock in defendant Bank are not pertinent [196] or material to any issue herein, and these defendants pray that these allegations may be stricken from the bill of complaint. If an answer thereto be required, these defendants say that none of them solicited complainant to acquire stock in defendant Bank, or made any representation to complainant, of the kind alleged, or otherwise, to induce him to become a stockholder.

7.

The directors of defendant Bank, including these individual defendants, took the oath of office prescribed by law before entering upon the performance of their duties as such directors; and these individual defendants do severally say that they have in no manner violated said oath of office but that on the contrary they have faithfully and honestly assumed and performed the duties and obligations of their offices as such directors respectively.

8.

It is not the fact that Henry L. Pittock in his lifetime, and the trustees of his estate after his

death, and any other persons or interests identified with them, dominated or controlled defendant Bank from its organization down to March 29, 1927, or at any time. No such combination for control ever existed, as these defendants have pointed out in their answer to Paragraph 5 of the bill of complaint. Henry L. Pittock in his lifetime, and the trustees of his estate after his death, at no time have exercised or attempted to exercise in and about the affairs of defendant Bank any other or greater rights than those lawfully vested in them as owners of stock of defendant Bank. [197]

9.

Increases of capital and surplus of defendant Bank were made in substantially the amounts and at about the times stated in Paragraph 9 of the bill of complaint. It is true also, although the fact is not pertinent or material to any issue herein, that at the time the capital was increased to \$2,000,000 in 1922, the stockholders of defendant Bank, in order to strengthen its position and to offset inevitable and unavoidable losses due to the sudden deflation of values following the termination of the World War, also voluntarily paid in the sum of \$500,000, \$350,000 of which was credited to the earnings account, the remainder, \$150,000, going to surplus, thereby increasing the surplus account from \$250,000 to \$400,000.

10.

These defendants are unable to determine the exact nature of the charge made against them in Par-

agraph 10 of the bill of complaint. They deny specifically that they or any of them in any manner or to any extent whatsoever, caused, required or directed to be lost the sums listed in said paragraph or any sum, or any assets of said Bank.

Each of the persons and corporations listed in said paragraph is indebted to defendant Bank and in some instances a portion of such indebtedness has been charged to profit and loss. But in each case, excepting the case of McCormick Lumber Company, the indebtedness is the result of inability on the part of the borrowers to repay when due loans made in the ordinary course of business at times and under circumstances such that these individual defendants and the officers of defendant Bank were in no manner at fault in the extension of [198] credit. In large part these loans were made prior to the year 1920, to borrowers then financially responsible and in most instances supported by collateral entirely adequate at the time in value, and the inability of the borrowers to repay the loans when due resulted from the sudden and unexpected drop in merchandise and other values following the cessation of the World War. Since that time the officers of defendant Bank have been active and diligent in their efforts to collect said loans and substantial recoveries have been made and are still being made.

All loans made by defendant Bank to McCormick Lumber Company have been paid in full. The indebtedness now owing by said Lumber Company is the result of the acceptance by defendant Bank for

credit to the account of the McCormick Lumber Company of certain checks and drafts, payment of which was later refused by the drawees. The acceptance of these checks and drafts for immediate credit was without the knowledge of any of these individual defendants and none of said defendants had any notice thereof or any opportunity whatever of preventing such crediting of checks and drafts, and none of said defendants is in any respect chargeable with negligence or fault in respect thereto.

It is not the fact that defendants in 1925 or at any time failed, neglected or refused to comply with any direction of any Bank Examiner or other representative of the Comptroller of the Currency to reduce the line of credit granted to J. E. Wheeler or to any companies in which he was interested. All present indebtedness due from said Wheeler, Wheeler Timber Company, Wheeler Estate and Telegram Publishing Company, is the result of loans made several years prior to 1925 upon a [199] sufficient showing of financial worth and supported in large part by adequate guaranties and/or collateral. Renewals of said loans were made from time to time when the borrowers were unable to pay at maturity, but it is not true that the Examiner of National Banks required the so-called Wheeler lines to be reduced because too much was loaned to one person, and such renewals were never granted in disobedience to any direction or against the advice of any Bank Examiner or other representative of the Comptroller of the Currency.

Further answering Paragraph 10 of the bill of complaint the defendants E. S. Collins, James Twohy, Charles H. Stewart and Mark Skinner severally say:

Defendant Collins became a director of defendant Bank on September 25, 1923; defendant Twohy on August 31, 1922; defendant Stewart on June 20, 1923, and defendant Skinner on January 10, 1922. If complainant's bill is intended as a charge that losses were made in the amounts stated in Paragraph 10 because of improper loans, these last-named defendants say that they were not directors when the loans were made and the loss resulting therefrom, if any, accrued before they assumed office; and since their respective assumption of office no act or omission on their part or on the part of any of them has increased or affected the amount of loss, if any, attributable to such loans.

11.

The allegations of Paragraph 11 of the bill of complaint are wholly untrue. Defendant Charles A. Morden was elected a director of defendant Bank on January 11, 1921, and served as such director until August 31, 1922, when he resigned, having sold his stock for a valuable consideration to [200] defendant Mark Skinner. Defendant Morden served as a member of the Examining Committee from the time of his election as a director until the end of the year 1921 only. During this period the Examining Committee made regular reports to the directors and such reports were regularly spread upon the minutes of the meetings of the

board of directors. But it is not the fact that said reports or any of them showed any condition of wrong administration or impending losses or any condition in the affairs of the defendant Bank requiring action by the directors to avoid loss. During this period and at all times the directors met regularly and carefully reviewed the reports of the Examining Committee and took such action in respect thereto as in the exercise of sound judgment seemed necessary. No reports were suppressed and nothing in the condition of the Bank was ever kept from the stockholders, and it is wholly untrue that defendant Morden resigned as a director because of any such undisclosed condition in the affairs of the Bank.

It is wholly false and untrue that at any time during the existence of the defendant Bank its Examining Committee made any report which would show a favorable but incorrect condition of the Bank or any report which showed any condition of said Bank except the true condition thereof as said Examining Committee found and believed to exist and attempted to disclose by its reports. All reports of the Examining Committee were made to the board of directors of the Bank only and were thereupon placed with the minutes of the meetings of the directors, at which said reports were received, and thereupon all of said reports became available for examination by all stockholders of the Bank and by the District Bank Examiner and any other representative of the Comptroller of the Currency. [201] All reports of the Examining Com-

mittee remained at all times and now remain in the minutes of the directors' meetings and were in fact read and their contents known to and understood by the District Bank Examiner, and could have been read and their contents known to and understood by any stockholder of the Bank or any representative of the Comptroller of the Currency.

It is untrue that the Examining Committee ever made a confidential, private or secret report, or any report, to Mark Skinner, vice-president, or to other officers or directors of the Bank, which showed any condition different from that disclosed by any report made to the District Bank Examiner, or to the Comptroller of the Currency, but whether the Comptroller of the Currency in person received copies of all reports made by the Examining Committee to the board of directors, defendants cannot say, although they aver that copies of such reports of the Examining Committee were sent to the Comptroller of the Currency whenever requested.

12.

These defendants are unable to determine what is attempted to be alleged in Paragraph 12 of the bill of complaint. Pursuant to the requirements of the by-laws of defendant Bank there was at all times an executive committee consisting of a majority of the board of directors, which committee met weekly and passed on applications for credit and kept fully informed in regard to the purchase and sales of securities, loans on collateral, discounts and other business activities of defendant Bank. Regular monthly meetings of the board of directors

were held at which the minutes of meetings of the Executive Committee were regularly read and submitted for approval. [202]

There was also maintained at all times, in accordance with the by-laws of defendant Bank, an examining committee whose duty it was to investigate the affairs and business of defendant Bank twice in each year, and said committee during all of said times carefully investigated the affairs of defendant Bank and reported the results of such investigations to the board of directors; and these defendants allege that throughout the period mentioned in the complaint every effort was made by these defendants to supervise and manage the affairs and business of defendant Bank faithfully and honestly.

On October 22, 1926, the Chief National Bank Examiner of the Twelfth Federal Reserve District advised defendant Bank by letter of the result of an examination of its assets and stated that it would be necessary to provide additional funds to the amount of not less than \$1,000,000 in order that nonproducing assets in this total could be eliminated. Thereafter these defendants, acting with the approval of said Bank Examiner, undertook the organization of a corporation capitalized at \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank nonproducing or "frozen" assets, as described in the report of said Bank Examiner. These defendants made every effort to consummate

said plan but were unable to do so. But thereafter, following a further examination by said Bank Examiner, these defendants determined that it was necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay [203] the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000 and in addition guaranteed the payment of an additional sum of \$1,000,000 in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

The allegation that acts or omissions of these individual defendants as directors from the time of the last increase in capital stock down to March 30, 1927, caused the defendant Bank to go into liquidation is without foundation in fact. Except as hereinabove in this answer to Paragraph 12 admitted, these defendants specifically deny each and every allegation of said Paragraph 12.

13.

It is not the fact that at any time these individual defendants as directors of defendant Bank suppressed or concealed from stockholders any information regarding the condition of the Bank and it is not true that stockholders' meetings were in any respect manipulated or controlled. No such combination among stockholders as is alleged in Paragraph 13 of the bill existed or ever was exercised to control

any action at stockholders' meetings, and during the entire history of defendant Bank the rights of minority stockholders in and about the administration of the affairs of defendant Bank were never in any degree impaired or restricted.

14.

The allegations of Paragraph 14 of the bill of complaint are entirely incorrect and untrue. None of these defendants participated in any way in the acquisition of stock [204] in defendant Bank by J. E. Wheeler, or aided him in any particular in securing credit for, or in the financing of his purchase of said stock. On the contrary, said purchase by J. E. Wheeler of stock theretofore owned by Guy M. Standifer, L. B. Menefee and R. V. Jones was consummated without the knowledge or consent of any of these defendants.

15.

The allegations of Paragraph 15 of the bill of complaint are wholly incorrect and untrue. None of these defendants at any time prevented or attempted to prevent or refused to allow the Telegram Publishing Company or J. E. Wheeler to sell the newspaper published by said Company. On the contrary, these defendant directors at all times after said J. E. Wheeler failed to pay his indebtedness to defendant Bank when due urged that said Wheeler be required, so far as defendant Bank could so require it, to sell sufficient of his assets to enable him to repay his indebtedness to defendant Bank. Defendants Metschan, Spaulding, Charlton,

Collins and Price, as directors, and defendant Morden, who was not a director, in 1925 or 1926, neither had nor attempted to exercise at any time any right to prevent the sale of the newspaper published by the Telegram Publishing Company, but at all such times said defendants, excluding defendant Morden, who was not then a director, urged upon the officers of defendant Bank that said Wheeler be required to make sales whenever possible and liquidate his indebtedness to defendant Bank.

16.

The allegations of Paragraph 16 of the bill of complaint are wholly incorrect and untrue. These individual [205] defendants were fully aware in 1925 and 1926 of the extent to which the assets of defendant Bank were nonproductive or frozen, and at all times during said years, and during the preceding years, had striven faithfully and honestly to convert said frozen assets into bankable productive commercial paper.

In June, 1926, a committee appointed by the directors, consisting of defendants Price, Metschan and Stewart, conferred with the Comptroller of the Currency and requested him to have an examination made of the condition of the Bank so that with the approval of the Comptroller, or his representative, steps could be taken for the elimination of all nonproductive or frozen assets. Thereafter such an examination was made and other conferences were held with the Chief Bank Examiner of the Twelfth Federal Reserve District and the Comp-

troller, and thereafter and in December, 1926, with the approval of the Chief Bank Examiner and the Comptroller, defendant Bank and its directors determined to organize a corporation with a capital of \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank nonproducing or frozen assets as designated in the report of the Chief Bank Examiner.

These defendants made every effort to consummate said plan but were unable to do so; and when it was ascertained that said plan could not be successfully carried through, these defendants determined that it would be necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7696 shares, undertook and agreed to purchase [206] and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000 and in addition guaranteed the payment of an additional sum of \$1,000,000 in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

These defendants at no time failed or refused to comply with any direction or request of the Comptroller of the Currency. On the contrary, they at all times worked in co-operation with him, and he with them, in the effort to formulate and carry out

a plan for the elimination of all nonproducing or frozen assets.

It is not the fact that during the fall of 1926, or into the year 1927, as alleged in Paragraph 16 of the bill of complaint, any further loans were made or credit extended to J. E. Wheeler, either directly or upon his endorsement. On the contrary, these individual defendants, for a long time prior thereto, were endeavoring in every way within their power as directors, to secure the retirement, in part at least, of the indebtedness owing by said J. E. Wheeler and the companies in which he was interested.

No loans in excess of the amounts permitted by law were ever made by these defendants to J. E. Wheeler or to companies in which he was interested or to any other persons, firms, or corporations.

17.

The allegations of Paragraph 17 of the bill of complaint are wholly incorrect and untrue. Defendant Bank was never in a condition such that it was unable to pay its depositors upon demand until on March 28, 1927, a run upon the [207] Bank occurred. Whereupon defendant Bank, in order to insure full and immediate payment to all depositors on demand, entered into a contract with United States National Bank and First National Bank of Portland under the terms of which said two Banks agreed to advance and loan to defendant Bank all moneys necessary to enable defendant Bank to pay its depositors on demand, defendant

Bank pledging to said two Banks all of its assets as collateral to said loan and in addition certain of its stockholders, including the Estate of Henry L. Pittock, individually guaranteeing repayment of said loan; and thereupon defendant Bank began liquidation of its assets in order to effect the payment of said loan to said two Banks.

Defendant O. L. Price was elected president of defendant Bank on March 1, 1927, but it is not the fact that thereafter the management of the Bank was left entirely to defendant Price, or that these individual defendants in any respect, or to any degree, delegated any of their duties as directors to the president of the Bank, or to anyone else. And it is not true that in February, 1927, or in March, 1927, or at any other time, these individual defendants, as directors, by the adoption of any plans or proposals before them could have avoided the condition which made necessary in their judgment the agreement with United States National Bank and First National Bank of Portland and the liquidation as hereinabove described. As to the supposed plans or proposals referred to in Paragraph 17 of the bill of complaint, these defendants say:

First. No plan for the reorganization of defendant Bank as a state bank and trust company was ever developed or [208] perfected so that it was possible of accomplishment. Such a plan was at one time suggested during the conferences with the Chief Bank Examiner hereinabove referred to, but it was rejected by defendant Bank and the Chief

Bank Examiner in favor of the plan for transferring the frozen assets to a corporation to be organized with capital furnished by the stockholders of defendant Bank.

Second. So far as these defendants have ever been advised, J. E. Wheeler was never willing to turn over his assets for the protection of defendant Bank, or for the benefit of his creditors, until long after the closing of defendant Bank, although at one time said Wheeler made an indefinite proposal for an assignment provided defendant Bank would advance large additional sums of money. Certainly none of these defendants deterred or in any way prevented or dissuaded said Wheeler from any such transfer of assets, but, on the contrary, were at all times anxious and willing and often demanded that said Wheeler should liquidate his property and assets in any way possible so that his indebtedness to defendant Bank might be paid.

Further answering Paragraph 17 of the bill of complaint these defendants admit that the officers and directors of defendant Bank caused to be published, on March 2, 1927, the announcement quoted on page 22 of the bill, but it is not true that the directors of the Bank left the sole management and control to defendant Price or in any manner abdicated their responsibilities as directors. Nor is it true that the run on the Bank, which occurred almost four weeks later, was permitted by defendant Price and these individual defendants as directors of the Bank, or any of them, or that they refrained from doing everything in their power to prevent it.

The announcement so published on March 2, 1927, resulted from the fact that at that time the directors of defendant Bank having been unable to carry through the plan for the organization of a corporation to take over nonproducing or frozen assets, decided that with the consent and approval of the Chief Bank Examiner, an assessment of 100% upon the capital stock of the Bank should be made, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to defendant Bank of the full amount to accrue from said 100% assessment.

18.

It is not the fact that any secret or undisclosed agreements have been made as alleged in Paragraph 18 of the bill of complaint. The agreements said to have been placed in the custody of James B. Kerr are the agreements already referred to in this answer between defendant Bank and its guaranteeing stockholders on the one hand and the United States National Bank and the First National Bank of Portland on the other. Said agreements were not kept secret, but, on the contrary, were presented to and duly ratified at a meeting of the stockholders of defendant Bank held May 3, 1927, and said agreements were thereupon spread upon the

minutes of the stockholders' meeting of May 3, 1927. At said meeting the shares of stock alleged in the bill to belong to complainant were represented by the proxy of the record owner, Francis P. [210] Graves & Company, and said stock was duly voted at said meeting in favor of the ratification of said agreements, and the owner of said stock should be and is estopped from objecting to the making of said agreements.

19.

It is not the fact that the directors of defendant Bank made or caused losses to said Bank in two million dollars, or in any sum, nor is it the fact that the directors impaired the capital stock of the Bank or wilfully or intentionally depreciated or destroyed any investment in the stock of the Bank.

20.

It is not the fact that these defendants gave out or published improperly or carelessly or negligently or unlawfully any information about the internal affairs of the Bank that in any way caused or aided in bringing about the run upon the Bank on March 28, 1927. It is true that negotiations were had on one or more occasions for the sale and transfer to another bank of the assets, business, and goodwill of defendant Bank, and that the prospective purchaser was given such information about the properties offered for sale as was necessary to the negotiations. But the directors conducting such negotiations acted honestly and faithfully in the interest of defendant Bank and its stockholders, and at no time did they improperly disclose or make

public the private affairs of the Bank or give out any information which in any way worked to the disadvantage of the Bank.

21.

These defendants are ready and willing to disclose any and all facts in their possession which may be relevant [211] or pertinent to any issue herein. But all books and records of defendant Bank are, and at all times have been, open to and available for inspection by the stockholders of defendant Bank.

22.

These defendants admit that defendant Bank is now claiming that complainant is indebted to defendant Bank. Except as thus admitted, these defendants specifically deny each and every allegation of Paragraph 22 of the bill of complaint.

Complainant is indebted to defendant Bank in the sum of \$10,000, with accrued and accruing interest. This indebtedness complainant has for a number of years failed to pay, but has insisted upon renewals of his notes as they respectively matured. These defendants say that nothing in any of the matters attempted to be set out in complainant's bill justifies complainant's failure to pay his indebtedness to defendant Bank, but that defendant Bank should be permitted, notwithstanding complainant's demands herein, to enforce immediate payment by complainant of the principal and interest of his debt.

23.

The answer made by these defendants to Para-

graph 22 of the bill of complaint sufficiently answers Paragraph 23 of the bill. No accounting of any kind is due complainant from defendant Bank or from any of these defendants, and complainant should not be permitted to use the demands or claims asserted in his bill as an excuse for withholding payment of his overdue obligation to defendant Bank.

24.

For their answer to Paragraph 24 of the bill of complaint these defendants say that the bill is without equity. [212] These individual defendants and defendant Bank have not at any time refrained, and are not now refraining, from any necessary or proper step for the redress of any wrong done to defendant Bank, but nothing in any of the matters attempted to be stated in the bill justifies the charge that any director has committed any wrong toward defendant Bank, and no stockholder, prior to the institution of a suit brought by a stockholder, one Charles A. Burekhardt, simultaneously with the filing of this bill, has ever made any complaint to defendant Bank, or its directors, of any such wrong, nor has any demand ever been made for the redress of any such supposed wrong.

The control which these individual defendants now have over the affairs and property of defendant Bank is that only which these individual defendants as directors and officers of defendant Bank should properly and lawfully exercise, and it is, and at all times has been, in subordination to the rights

of the stockholders under the articles of incorporation and by-laws duly adopted.

For a further and separate answer and by way of abatement of this suit, these defendants severally say that complainant is without right, authority, or qualification to bring this proceeding, and the proceeding should be abated and dismissed.

Complainant is not, and at the time of commencing this suit was not, a stockholder of defendant Bank. On October 18, 1926, complainant endorsed and transferred to Francis P. Graves & Company the stock in defendant Bank theretofore owned by him, and at his direction said stock was thereupon transferred [213] upon the books of defendant Bank and new certificates therefor issued to the transferee. Since October 18, 1926, complainant has not been a stockholder in defendant Bank.

WHEREFORE, These defendants, having fully answered the bill of complaint herein, pray that they be hence dismissed with costs and their disbursements herein taxed against complainant.

CHARLES H. CAREY,

JAMES B. KERR,

CHARLES A. HART,

CHARLES E. McCULLOCH,

Attorneys for the Above-named Answering Defendants.

CAREY AND KERR,

Of Counsel.

M. A. ZOLLINGER,

Of Counsel for Defendant E. S. Collins.

State of Oregon,
County of Multnomah,—ss.

I, O. L. Price, make solemn oath and say: I am president of the Northwestern National Bank, a corporation, one of the above-named defendants; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

O. L. PRICE.

Subscribed and sworn to before me this 15th day of December, 1927.

[Notarial Seal] PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931.

State of Oregon,
County of Multnomah,—ss.

I, A. D. Charlton, make solemn oath and say: I am one of the above-named defendants; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

A. D. CHARLTON.

Subscribed and sworn to before me this 15th day of December, 1927.

[Notarial Seal] PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931.

State of Oregon,
County of Multnomah,—ss.

I, E. S. Collins, make solemn oath and say:
I am one of the above-named defendants; so much
of the foregoing answer as concerns my own acts
and deeds is true to the best of my own knowledge,
and so much thereof as concerns the acts or deeds
of any other person or persons I believe to be true.

E. S. COLLINS.

Subscribed and sworn to before me this 16th
day of December, 1927.

[Notarial Seal] PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931. [215]

State of Oregon,
County of Multnomah,—ss.

I, Natt McDougall, make solemn oath and say:
I am one of the above-named defendants; so much
of the foregoing answer as concerns my own acts
and deeds is true to the best of my own knowledge,
and so much thereof as concerns the acts or deeds
of any other person or persons I believe to be true.

NATT McDOUGALL.

Subscribed and sworn to before me this 16th
day of December, 1927.

[Notarial Seal] PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931.

State of Oregon,
County of Multnomah,—ss.

I, Frederick F. Pittock, make solemn oath and say:
I am one of the above-named defendants; so much
of the foregoing answer as concerns my own acts
and deeds is true to the best of my own knowledge,
and so much thereof as concerns the acts or deeds
of any other person or persons I believe to be true.

FREDERICK F. PITTOCK.

Subscribed and sworn to before me this 15th
day of December, 1927.

[Notarial Seal]

I. F. PHIPPS,

Notary Public for Oregon.

My commission expires Dec. 21, 1928.

State of Oregon,
County of Multnomah,—ss.

I, Mark Skinner, make solemn oath and say:
I am one of the above-named defendants; so much
of the foregoing answer as concerns my own acts
and deeds is true to the best of my own knowledge,
and so much thereof as concerns the acts or deeds
of any other person or persons I believe to be true.

MARK SKINNER.

Subscribed and sworn to before me this 15th
day of December, 1927.

[Notarial Seal]

I. F. PHIPPS,

Notary Public for Oregon.

My commission expires Dec. 21, 1928. [216]

State of Oregon,
County of Multnomah,—ss.

I, Charles H. Stewart, make solemn oath and say:
I am one of the above-named defendants; so much
of the foregoing answer as concerns my own acts
and deeds is true to the best of my own knowledge,
and so much thereof as concerns the acts or deeds
of any other person or persons I believe to be true.

CHARLES H. STEWART.

Subscribed and sworn to before me this 15th
day of December, 1927.

[Notarial Seal] PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931.

State of Oregon,
County of Multnomah,—ss.

I, O. L. Price, make solemn oath and say:
I am one of the above-named defendants; so much
of the foregoing answer as concerns my own acts
and deeds is true to the best of my own knowledge,
and so much thereof as concerns the acts or deeds
of any other person or persons I believe to be true.

O. L. PRICE.

Subscribed and sworn to before me this 15th
day of December, 1927.

[Notarial Seal] PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931.

State of Oregon,
County of Multnomah,—ss.

I, Charles A. Hart, make solemn oath and say: I am attorney for James F. Twohy, one of the above-named defendants. I have read and know the contents of the foregoing answer made on behalf of said defendant and I believe it to be true; and I made this verification on behalf of the defendant James F. Twohy because said defendant is absent from the district of Oregon, wherein this suit is brought.

CHARLES A. HART.

Subscribed and sworn to before me this 16 day of December, 1927.

[Notarial Seal] PHILIP CHIPMAN,
Notary Public for Oregon.

My commission expires Aug. 28, 1931. [217]

State of Oregon,
County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 17th day of December, 1927, by receiving a copy thereof, duly certified to as such by Charles A. Hart, of attorneys for within named defendants.

W. C. BRISTOL,
Attorney for Plaintiff.

Filed December 17, 1927. [218]

AND AFTERWARDS, to wit, on the 19th day of December, 1927, there was duly filed in said court, an answer of defendant Charles K. Spaulding, in words and figures as follows, to wit: [219]

[Title of Court and Cause.]

ANSWER OF DEFENDANT CHARLES K. SPAULDING.

Now comes the defendant, Charles K. Spaulding, and answering the bill of complaint herein, says:

I.

This answering defendant has no knowledge as to the present residence or citizenship of complainant. At the time he became a stockholder in defendant Bank, and for a number of years thereafter, he was a citizen and resident of Oregon and this defendant is not advised as to the claimed present residence and citizenship and the diversity of citizenship asserted as a result thereof.

Defendant Chauncey McCormick is a resident and citizen of the State of Illinois.

Defendant The Northwestern National Bank is a national banking association organized under the banking laws of the United States and doing business in the city of Portland, Oregon.

Defendants O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metschan, Frederick F. Pittock, Mark Skinner, [220] Charles K.

Spaulding, Charles H. Stewart and James F. Twohy are and for a number of years last past have been directors of defendant The Northwestern National Bank, and each was and is a citizen and resident of Oregon.

Defendant Charles A. Morden is a citizen and resident of Oregon, and he was at one time a director of defendant The Northwestern National Bank.

It is true that defendants O. L. Price and Charles A. Morden are trustees under the last will and testament of Henry L. Pittock, deceased, and that defendant Charles A. Morden is an officer of Oregonian Publishing Company, a corporation, but this defendant avers that neither of said facts is in any respect pertinent or material to any issue herein. This defendant believes that the reference to said facts in complainant's bill is for some ulterior purpose and constitutes impertinence.

Defendant Emery Olmstead was, prior to March 1, 1927, president and a director of defendant Bank. On that day he was succeeded as such president by defendant O. L. Price, who theretofore had been chairman of the board of directors of defendant Bank.

II.

This defendant is unable to determine from the bill of complaint herein what amount, if any, is involved in this suit, and he leaves complainant to his proof of the allegation that a sum in excess of \$3,000.00 is involved.

III.

This defendant is unable to determine from the

bill of complaint herein whether the banking statutes referred to in paragraph 3 of the bill are, as there asserted, a part of any involved with the subject matter of this suit, and denies that the laws referred to in Paragraph 3 of the bill are a part of [221] or involved in this suit.

IV.

It is not the fact that any wrongs have been committed against the defendant Bank for which the defendants, who are or were directors, have at any time been unwilling to seek redress. On the contrary, the defendants, who are and were directors, and each of them, at all times have been ready and willing, and now are ready and willing to sue and to call to account any and all persons or parties in any manner responsible for wrongs to defendant Bank.

It is not the fact that before the filing of the bill of complaint herein any demand was made upon defendant Bank or upon the individual defendants as its directors, to correct or right the matters referred to as wrongs in the bill of complaint; on the contrary, neither complainant, nor any stockholder of defendant Bank has at any time made any complaint, charge, or statement to defendant Bank or any of its directors, that any such alleged wrongs had been suffered; nor has complainant or any stockholder ever demanded or requested that any step of any kind be taken to redress such supposed wrongs or to enforce any duties or liabilities

of the individual defendants as directors of defendant Bank or otherwise.

Complainant is not in fact a stockholder of defendant Bank. As will be more fully stated hereinafter in this answer, complainant more than a year prior to the filing of this suit assigned and caused to be transferred to Francis P. Graves & Company, of Los Angeles, California, all of the shares of stock in defendant Bank then held by him, and since that time complainant has not been and is not now a stockholder of defendant Bank.

Complainant is not and for more than a year prior to [222] the institution of this suit, has not been, a stockholder of defendant Bank, but if the allegations of paragraph 4 of the bill of complaint are to be construed as asserting that the owner or owners of the stock formerly held by complainant have not at all times enjoyed each and all of the rights vested in them as stockholders, this defendant denies the charge. The allegations that the individual defendants through majority control of stock were or are adverse or antagonistic to complainant or any stockholder, or were or are attempting through such control to carry out a plan designed to injure defendant Bank and its minority stockholders, and each and all of the statements and insinuations of the last subparagraph of Paragraph 4 of the bill of complaint, are without any foundation in fact and are untrue and are denied.

V.

This defendant denies that at any time in the

entire history of defendant Bank there ever existed any such combination between the individual defendants for the control of the stock of defendant Bank as is alleged in Paragraph 5 of the bill of complaint or otherwise or at all. It is true that the estate of Henry L. Pittock, of which defendants O. L. Price and Charles A. Morden are trustees, is and for several years last past has been the owner of 7,696 shares out of the total 20,000 shares of stock outstanding, and that defendant O. L. Price individually owns 290 shares and that other individuals and corporations own and hold shares of stock substantially to the number stated in Paragraph 5 of the bill of complaint, except that defendant Charles A. Morden has not been the owner of any shares of stock in defendant Bank since the year 1922. But no combination or confederation for the domination through control of a majority of the stock of defendant Bank has ever existed between this defendant and any other director or stockholder. [223] As they have reference to this defendant the allegations of Paragraph 5 of the bill of complaint with respect to such combination and control are without foundation in fact and are untrue and are denied.

VI.

Complainant, Fred A. Ballin, became a stockholder of defendant Bank on July 29, 1918, by the acquisition of 100 shares and thereafter and on July 1, 1922, he acquired an additional 100 shares. He continued to be such stockholder until October 18, 1926, at which time all of said stock was assigned

and transferred and new certificates issued therefor to Francis P. Graves & Company of Los Angeles, California.

The allegations of Paragraph 6 of the bill of complaint to the effect that representations were made to induce complainant to acquire stock in defendant Bank are not pertinent or material to any issue herein. If an answer thereto be required, this defendant says that he did not solicit complainant to acquire stock in defendant Bank, or make any representation to complainant, of the kind alleged, or otherwise, to induce him to become a stockholder.

VII.

The directors of defendant Bank, including this defendant, took the oath of office prescribed by law before entering upon the performance of their duties as such directors; and this defendant says that he has in no manner violated said oath of office but that on the contrary he has faithfully and honestly assumed and performed the duties and obligations of his office as such director.

VIII.

It is not the fact that Henry L. Pittock in his lifetime, or the trustees of his estate after his death, or any other [224] persons or interests identified with them, dominated or controlled defendant Bank from its organization down to March 29, 1927, or at any time. No such combination for control ever existed, as this defendant has pointed out in his answer to Paragraph 5 of the bill of complaint. Henry L. Pittock in his lifetime, and the trustees

of his estate after his death, at no time have exercised or attempted to exercise in or about the affairs of defendant Bank any other or greater rights than those lawfully vested in them as owners of stock of defendant Bank. This defendant avers that during all the time he was a director of the defendant Bank that he was independent of the domination or control of any person, persons or corporation, and that at all such times he acted independently as he deemed to be for the best interests of the Bank and all of its stockholders.

IX.

Increases of capital and surplus of defendant Bank were made in substantially the amounts and at about the times stated in Paragraph 9 of the bill of complaint. It is true also, although the fact is not pertinent or material to any issue herein, that at the time the capital was increased to \$2,000,000 in 1922, the stockholders of defendant Bank, in order to strengthen its position and to offset inevitable and unavoidable losses due to the sudden deflation of values following the termination of the World War, also voluntarily paid in the sum of \$500,000, \$350,000 of which was credited to the earnings account, the remainder, \$150,000, going to surplus, thereby increasing the surplus account from \$250,000 to \$400,000.

X.

This defendant is unable to determine the nature of the charge made against the defendants in Paragraph 10 of the bill of complaint. He denies spe-

cifically that he in any manner or to [225] any extent whatsoever, caused, required or directed to be lost the sums listed in said paragraph or any sum, or any assets of said Bank.

Each of the persons and corporations listed in said paragraph is indebted to defendant Bank and in some instances a portion of such indebtedness has been charged to profit and loss. But in each case, excepting the case of McCormick Lumber Company, the indebtedness is the result of inability on the part of the borrowers to repay when due loans made in the ordinary course of business at times and under circumstances such that this individual defendant was in no manner at fault in the extension of credit. In large part these loans were made prior to the year 1920, to borrowers then financially responsible and in most instances supported by collateral entirely adequate at the time in value, and the inability of the borrowers to repay the loans when due resulted from the sudden and unexpected drop in merchandise and other values following the cessation of the World War. Since that time the officers of defendant Bank have been active and diligent in their efforts to collect said loans and substantial recoveries have been made and are still being made.

All loans made by defendant Bank to McCormick Lumber Company have been paid in full. The indebtedness now owing by said Lumber Company is the result of the acceptance by defendant Bank for credit to the account of the McCormick Lumber Company of certain checks and drafts, payment of

which was later refused by the drawees. The acceptance of these checks and drafts for immediate credit was without the knowledge of this defendant and he had no notice thereof or opportunity whatever of preventing such crediting of checks or drafts, and he is in no respect chargeable with negligence or fault in respect thereto.

It is not the fact that this defendant in 1925 or at any time failed, neglected or refused to comply with any direction of any Bank Examiner or other representative of the [226] Comptroller of the Currency to reduce the line of credit granted to J. E. Wheeler or to any companies in which he was interested. All present indebtedness due from said Wheeler, Wheeler Timber Company, Wheeler Estate and Telegram Publishing Company, is the result of loans made several years prior to 1925 upon a sufficient showing of financial worth and supported in large part by adequate guaranties and/or collateral. Renewals of said loans were made from time to time when the borrowers were unable to pay at maturity, but it is not true that the Examiner of National Banks required the so-called Wheeler lines to be reduced because too much was loaned to one person, and such renewals were never granted in disobedience to any direction or against the advice of any Bank Examiner or other representative of the Comptroller of the Currency.

Further answering Paragraph 10 of the bill of complaint defendant says that he became a director of the defendant Bank on the 31st day of August,

1922. If complainant's bill is intended as a charge that losses were made in the amounts stated in Paragraph 10 because of improper loans, this defendant says that he was not a director when the loans were made and the loss resulting therefrom, if any, accrued before he assumed office; and since his assumption of office no act or omission on his part has increased or affected the amount of loss, if any, attributable to such loans.

XI.

The allegations of Paragraph 11 of the bill of complaint are untrue and are denied. Defendant Charles A. Morden was elected a director of defendant Bank on January 11, 1921, and served as such director until August 31, 1922, when he resigned, having sold his stock for a valuable consideration to defendant Mark Skinner. Defendant Morden served as a member of the Examining Committee from the time of his election as a [227] director until the end of the year 1921 only. During this period the Examining Committee made regular reports to the directors and such reports were regularly spread upon the minutes of the meetings of the board of directors. But it is not the fact that said reports or any of them showed any condition of wrong administration or impending losses or any condition in the affairs of the defendant Bank requiring action by the directors to avoid loss. During this period and at all times the directors met regularly and carefully reviewed the reports of the Examining Committee and took such action in respect thereto as in the exercise of sound

judgment seemed necessary. No reports were suppressed and nothing in the condition of the Bank was ever kept from the stockholders, and it is untrue that defendant Morden resigned as a director because of any such undisclosed condition in the affairs of the Bank.

It is untrue that at any time during the existence of the defendant Bank its Examining Committee made any report which would show a favorable but incorrect condition of the Bank or any report which showed any condition of said Bank except the true condition thereof as said Examining Committee found and believed to exist and attempted to disclose by its reports. All reports of the Examining Committee were made to the board of directors of the Bank only and were thereupon placed with the minutes of the meetings of the directors, at which said reports were received, and thereupon all of said reports became available for examination by all stockholders of the Bank and by the District Bank Examiner and any other representative of the Comptroller of the Currency. All reports of the Examining Committee remained at all times and now remain in the minutes of the directors' meetings and were in fact read and their contents known to and understood by the District Bank Examiner, and could have been read and their contents known to and understood [228] by any stockholder of the Bank or any representative of the Comptroller of the Currency.

It is untrue that the Examining Committee ever made a confidential, private or secret report, or any

report, to Mark Skinner, vice-president, or to other officers or directors of the Bank, which showed any condition different from that disclosed by any report made to the District Bank Examiner, or to the Comptroller of the Currency, but whether the Comptroller of the Currency in person received copies of all reports made by the Examining Committee to the board of directors, defendant cannot say, although he avers that copies of such reports of the Examining Committee were sent to the Comptroller of the Currency whenever requested.

XII.

This defendant is unable to determine what is attempted to be alleged in Paragraph 12 of the bill of complaint. Pursuant to the requirements of the by-laws of defendant Bank there was at all times an executive committee consisting of a majority of the board of directors, which committee met weekly and passed on applications for credit and kept fully informed in regard to the purchase and sales of securities, loans on collateral, discounts and other business activities of defendant Bank. Regular monthly meetings of the board of directors were held at which the minutes of meetings of the Executive Committee were regularly read and submitted for approval.

There was also maintained at all times, in accordance with the by-laws of defendant Bank, an examining committee whose duty it was to investigate the affairs and business of defendant Bank twice in each year, and said committee during all of said times carefully investigated the affairs of

defendant Bank and reported the results of such investigations to the board of [229] directors; and this defendant alleges that throughout the period mentioned in the complaint every effort was made by him with respect to all matters coming within the scope of his office or duty as a director to supervise and manage the affairs and business of defendant Bank faithfully and honestly.

On October 22, 1926, the Chief National Bank Examiner of the Twelfth Federal Reserve District advised defendant Bank by letter of the result of an examination of its assets and stated that it would be necessary to provide additional funds to the amount of not less than \$1,000,000 in order that nonproducing assets in this total could be eliminated. Thereafter this defendant with other defendants, acting with the approval of said Bank Examiner, undertook the organization of a corporation capitalized at \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank nonproducing or "frozen" assets, as described in the report of said Bank Examiner. Such acting defendants made every effort to consummate said plan but were unable to do so. But thereafter, following a further examination by said Bank Examiner, it was determined to be necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding

7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000 and in addition guaranteed the payment of an additional sum of \$1,000,000 in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

The allegation that acts or omissions of this defendant [230] as a director or otherwise caused defendant Bank to go into liquidation is untrue. Except as hereinabove in this answer to Paragraph 12 admitted, this defendant specifically denies each and every allegation of said Paragraph 12.

XIII.

It is not the fact that at any time this defendant suppressed or concealed from stockholders any information regarding the condition of the Bank and it is not true that stockholders' meetings were in any respect manipulated or controlled by this defendant or by any person in combination with him. No such combination among stockholders as is alleged in Paragraph 13 of the bill existed.

XIV.

The allegations of Paragraph 14 of the bill of complaint are untrue. This defendant did not participate in any way in the acquisition of stock in defendant Bank by J. E. Wheeler, or aid him in any particular in securing credit for, or in the financing of his purchase of said stock. On the contrary, said purchase by J. E. Wheeler of stock

theretofore owned by Guy M. Standifer, L. B. Menefee and R. V. Jones was consummated without the knowledge or consent of this defendant.

XV.

The allegations of Paragraph 15 of the bill of complaint are untrue. This defendant at no time prevented or attempted to prevent or refuse to allow the Telegram Publishing Company or J. E. Wheeler to sell the newspaper published by said Company. On the contrary, this defendant at all times after said J. E. Wheeler failed to pay his indebtedness to defendant Bank when due, urged that said Wheeler be required, so far as defendant Bank could so require it, to sell sufficient of his assets to enable him to repay his indebtedness to defendant Bank. [231] Defendants Metschan, Spaulding, Charlton, Collins and Price, as directors, and defendant Morden, who was not a director, in 1925 or 1926, neither had nor attempted to exercise at any time any right to prevent the sale of the newspaper published by the Telegram Publishing Company, but at all such times said defendants, excluding defendant Morden, who was not then a director, urged upon the officers of defendant Bank that said Wheeler be required to make sales whenever possible and liquidate his indebtedness to defendant Bank.

XVI.

The allegations of Paragraph 16 of the bill of complaint are untrue. This defendant was fully aware in 1925 and 1926 of the extent to which the

assets of defendant Bank were nonproductive or frozen, and at all times during said years, and during the preceding years, had striven faithfully and honestly to convert said frozen assets into bankable productive commercial paper.

In June, 1926, a committee appointed by the directors, consisting of defendants Price, Metschen and Stewart, conferred with the Comptroller of the Currency and requested him to have an examination made of the condition of the Bank so that with the approval of the Comptroller, or his representative, steps could be taken for the elimination of all nonproductive or frozen assets. Thereafter such an examination was made and other conferences were held with the Chief Bank Examiner of the Twelfth Federal Reserve District and the Comptroller, and thereafter and in December, 1926, with the approval of the Chief Bank Examiner and the Comptroller, defendant Bank and its directors determined to organize a corporation with a capital of \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing [232] \$57.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank nonproducing or frozen assets as designated in the reports of the Chief Bank Examiner.

This defendant and other defendants made every effort to consummate said plan but were unable to do so, and when it was ascertained that said plan could not be successfully carried through, it was determined to be necessary to levy a full 100%

assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000 and in addition guaranteed the payment of an additional sum of \$1,000,000 in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

This defendant at no time failed or refused to comply with any direction or request of the Comptroller of the Currency. On the contrary, he at all times worked in co-operation with him, in the effort to formulate and carry out a plan for the elimination of all nonproducing or frozen assets.

It is not the fact that during 1926, or 1927, as alleged in Paragraph 16 of the bill of complaint, any further loans were made or credit extended to J. E. Wheeler, either directly or upon his endorsement. On the contrary, these individual defendants, for a long time prior thereto, were endeavoring in every way within their power as directors, to secure the retirement, in part at least, of the indebtedness owing by said J. E. Wheeler and the companies in which he was interested.

No loans in excess of the amounts permitted by law were ever made by these defendants to J. E. Wheeler or to companies in [233] which he was interested or to any other persons, firms or corporations.

XVII.

The allegations of Paragraph 17 of the bill of complaint are untrue. Defendant Bank was never in a condition such that it was unable to pay its depositors upon demand until on March 28, 1927, a run upon the Bank occurred. Whereupon defendant Bank, in order to insure full and immediate payment to all depositors on demand, entered into a contract with United States National Bank and First National Bank of Portland under the terms of which said two Banks agreed to advance and loan to defendant Bank all moneys necessary to enable defendant Bank to pay its depositors on demand, defendant Bank pledging to said two Banks all of its assets as collateral to said loan and in addition certain of its stockholders, including the Estate of Henry L. Pittock, individually guaranteeing repayment of said loan; and thereupon defendant Bank began liquidation of its assets in order to effect the payment of said loan to said two Banks.

Defendant O. L. Price was elected president of defendant Bank on March 1, 1927, but it is not the fact that thereafter the management of the Bank was left entirely to defendant Price, or that this defendant in any respect, or to any degree, delegated any of his duties as director to the president of the Bank, or to anyone else. And it is not true that in February, 1927, or in March, 1927, or at any other time, the directors, by the adoption of any plans or proposals before them could have avoided the condition which made necessary in their judgment the agreement with United States National

Bank and First National Bank of Portland and the liquidation as hereinabove described. As to the supposed plans or proposals referred to in Paragraph 17 of the bill of complaint, this defendant says: [234]

First. No plan for the reorganization of defendant Bank as a state bank and trust company was ever developed or perfected so that it was possible of accomplishment. Such a plan was at one time suggested during the conferences with the Chief Bank Examiner hereinabove referred to, but it was rejected by defendant Bank and the Chief Bank Examiner in favor of the plan for transferring the frozen assets to a corporation to be organized with capital furnished by the stockholders of defendant Bank.

Second. So far as this defendant has ever been advised, J. E. Wheeler was never willing to turn over his assets for the protection of defendant Bank, or for the benefit of his creditors, until long after the closing of defendant Bank, although at one time said Wheeler made an indefinite proposal for an assignment provided defendant Bank would advance large additional sums of money. This defendant did not deter or in any way prevent or dissuade said Wheeler from any such transfer of assets, but, on the contrary, was at all times anxious and willing and often demanded that said Wheeler liquidate his property and assets in any way possible so that his indebtedness to defendant Bank might be paid.

Further answering Paragraph 17 of the bill of

complaint this defendant admits that the officers and directors of defendant Bank caused to be published, on March 2, 1927, the announcement quoted on page 22 of the bill, but it is not true that the directors of the Bank left the sole management and control to defendant Price or in any manner abdicated their responsibilities as directors. Nor is it true that the run on the Bank, which occurred almost four weeks later, was permitted by defendant Price or any of the then directors of the Bank, or that they refrained from doing everything in their power to prevent it.

The announcement so published on March 2, 1927, resulted from the fact that at that time the directors of defendant [235] Bank having been unable to carry through the plan for the organization of a corporation to take over nonproducing or frozen assets, decided that with the consent and approval of the Chief Bank Examiner, an assessment of 100% upon the capital stock of the Bank should be made, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to defendant Bank of the full amount to accrue from said 100% assessment.

XVIII.

It is not the fact that any secret or undisclosed

agreements have been made as alleged in Paragraph 18 of the bill of complaint. The agreements said to have been placed in the custody of James B. Kerr are the agreements already referred to in this answer between defendant Bank and its guaranteeing stockholders on the one hand and the United States National Bank and the First National Bank of Portland on the other. Said agreements were not kept secret, but, on the contrary, were presented to and duly ratified at a meeting of the stockholders of defendant Bank held May 3, 1927, and said agreements were thereupon spread upon the minutes of the stockholders' meeting of May 3, 1927. At said meeting the shares of stock alleged in the bill to belong to complainant were represented by the proxy of the record owner, Francis P. Graves & Company, and said stock was duly voted at said meeting in favor of the ratification of said agreements, and the owner of said stock should be and is estopped from objecting to the making of said agreements.

XIX.

It is not the fact that the directors of defendant Bank made or caused losses to said Bank in two million dollars, or in [236] any sum, nor is it the fact that the directors impaired the capital stock of the Bank or wilfully or intentionally depreciated or destroyed any investment in the stock of the Bank.

XX.

It is not the fact that this defendant gave out or published improperly or carelessly or negligently

or unlawfully or at all any information about the internal affairs of the Bank. It is true that negotiations were had on one or more occasions for the sale and transfer to another bank of the assets, business, and good will of defendant Bank, and that the prospective purchaser was given such information about the properties offered for sale as was necessary to the negotiations. But the directors conducting such negotiations acted honestly and faithfully in the interest of defendant Bank and its stockholders, and at no time did they improperly disclose or make public the private affairs of the Bank or give out any information which in any way worked to the disadvantage of the Bank.

XXI.

This defendant is ready and willing to disclose any and all facts in his possession which may be relevant or pertinent to any issue herein. But all books and records of defendant Bank are, and at all times have been, open to and available for inspection by the stockholders of defendant Bank, but none of said books or records is in the possession of this answering defendant.

XXII.

This defendant admits that defendant Bank is now claiming that complainant is indebted to defendant Bank. Except as thus admitted this defendant specifically denies each and every allegation of Paragraph 22 of the bill of complaint.

Complainant is indebted to defendant Bank in the sum of \$10,000, with accrued and accruing in-

terest. This indebtedness [237] complainant has for a number of years failed to pay, but has insisted upon renewals of his notes as they respectively matured. This defendant says that nothing in any of the matters attempted to be set out in complainant's bill justifies complainant's failure to pay his indebtedness to defendant Bank, but that defendant Bank should be permitted, notwithstanding complainant's demands herein, to enforce immediate payment by complainant of the principal and interest of his debt.

XXIII.

The answer made by this defendant to Paragraph 22 of the bill of complaint sufficiently answers Paragraph 23 of the bill. No accounting of any kind is due complainant from defendant Bank or from this defendant, and complainant should not be permitted to use the demands or claims asserted in his bill as an excuse for withholding payment of his overdue obligation to defendant Bank.

XXIV.

For answer to Paragraph 24 of the bill of complaint this defendant says that the bill is without equity. This defendant and defendant Bank have not at any time refrained, and are not now refraining, from any necessary or proper step for the redress of any wrong done to defendant Bank, but nothing in any of the matters attempted to be stated in the bill justifies the charge that this defendant has committed any wrong upon defendant Bank, and no stockholder, prior to the institution of a

suit brought by a stockholder, one Charles A. Burekhardt, simultaneously with the filing of this bill, has ever made any complaint to defendant Bank, or its directors, of any such wrong, nor has any demand ever been made for the redress of any such supposed wrong. [238]

This defendant denies that he now controls or ever has controlled the affairs of defendant Bank and avers that at all times in his actions as a director and as a stockholder he has been faithful in the performance of his duties as a director and faithful to the rights of the Bank and of its stockholders.

For a further and separate answer and by way of abatement of this suit, this defendant says that complainant is without right, authority, or qualification to bring this proceeding, and the proceeding should be abated and dismissed.

Complainant is not, and at the time of commencing this suit was not, a stockholder of defendant Bank. On October 18, 1926, complainant endorsed and transferred to Francis P. Graves & Company the stock in defendant Bank theretofore owned by him, and at this direction said stock was thereupon transferred upon the books of defendant Bank and new certificates therefor issued to the transferee. Since October 18, 1926, complainant has not been a stockholder in defendant Bank.

WHEREFORE, this defendant, having fully answered the bill of complaint herein, prays that

he be hence dismissed with costs and his disbursements herein taxed against complainant.

WINTER and MAGUIRE,
Attorneys for the Defendant.

Of Counsel. [239]

State of Oregon,
County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 19th day of December, 1927, by receiving a copy thereof, duly certified to as such by Robert F. Maguire, attorney for defendant Charles K. Spaulding.

W. C. BRISTOL,
Attorney for Complainant.

Filed December 19, 1927. [240]

AND AFTERWARDS, to wit, on the 19th day of December, 1927, there was duly filed in said court, an answer of defendant Phil Metschan, in words and figures as follows, to wit: [241]

[Title of Court and Cause.]

ANSWER OF DEFENDANT PHIL METSCHAN.

Now comes the defendant, Phil Metschan and answering the bill of complaint herein, says:

I.

This answering defendant has no knowledge as

to the present residence or citizenship of complainant. At the time he became a stockholder in defendant Bank, and for a number of years thereafter, he was a citizen and resident of Oregon and this defendant is not advised as to the claimed present residence and citizenship and the diversity of citizenship asserted as a result thereof.

Defendant Chauncey McCormick is a resident and citizen of the State of Illinois.

Defendant The Northwestern National Bank is a national banking association organized under the banking laws of the United States and doing business in the city of Portland, Oregon.

Defendants O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metschan, Frederick F. Pittock, Mark Skinner, [242] Charles K. Spaulding, Charles H. Stewart and James F. Twohy are and for a number of years last past have been directors of defendant The Northwestern National Bank, and each was and is a citizen and resident of Oregon.

Defendant Charles A. Morden is a citizen and resident of Oregon, and he was at one time a director of defendant The Northwestern National Bank.

It is true that defendants O. L. Price and Charles A. Morden are trustees under the last will and testament of Henry L. Pittock, deceased, and that defendant Charles A. Morden is an officer of Oregonian Publishing Company, a corporation, but this defendant avers that neither of said facts is in any respect pertinent or material to any issue herein. This defendant believes that the reference

to said facts in complainant's bill is for some ulterior purpose and constitutes impertinence.

Defendant Emery Olmstead was, prior to March 1, 1927, president and a director of defendant Bank. On that day he was succeeded as such president by defendant O. L. Price, who theretofore had been chairman of the board of directors of defendant Bank.

II.

This defendant is unable to determine from the bill of complaint herein what amount, if any, is involved in this suit, and he leaves complainant to his proof of the allegation that a sum in excess of \$3,000.00 is involved.

III.

This defendant is unable to determine from the bill of complaint herein whether the banking statutes referred to in Paragraph 3 of the bill are, as there asserted, a part of and involved with the subject matter of this suit, and denies that the laws referred to in Paragraph 3 of the bill are a part of [243] or involved in this suit.

IV.

It is not the fact that any wrongs have been committed against the defendant Bank for which the defendants, who are or were directors, have at any time been unwilling to seek redress. On the contrary, the defendants, who are and were directors, and each of them, at all times have been ready and willing, and now are ready and willing to sue and to call to account any and all persons or par-

ties in any manner responsible for wrongs to defendant Bank.

It is not the fact that before the filing of the bill of complaint herein any demand was made upon defendant Bank or upon the individual defendants as its directors, to correct or right the matters referred to as wrongs in the bill of complaint; on the contrary, neither complainant, nor any stockholder of defendant Bank has at any time made any complaint, charge, or statement to defendant Bank or any of its directors, that any such alleged wrongs had been suffered; nor has complainant or any stockholder ever demanded or requested that any step of any kind be taken to redress such supposed wrongs or to enforce any duties or liabilities of the individual defendants as directors of defendant Bank or otherwise.

Complainant is not in fact a stockholder of defendant Bank. As will be more fully stated hereinafter in this answer, complainant more than a year prior to the filing of this suit assigned and caused to be transferred to Francis P. Graves & Company, of Los Angeles, California, all of the shares of stock in defendant Bank then held by him, and since that time complainant has not been and is not now a stockholder of defendant Bank.

Complainant is not now and for more than a year prior to [244] the institution of this suit, has not been, a stockholder of defendant Bank, but if the allegations of Paragraph 4 of the bill of complaint are to be construed as asserting that the owner or owners of the stock formerly held by

complainant have not at all times enjoyed each and all of the rights vested in them as stockholders, this defendant denies the charge. The allegations that the individual defendants through majority control of stock were or are adverse or antagonistic to complainant or any stockholder, or were or are attempting through such control to carry out a plan designed to injure defendant Bank and its minority stockholders, and each and all of the statements and insinuations of the last subparagraph of Paragraph 4 of the bill of complaint, are without any foundation in fact and are untrue and are denied.

V.

This defendant denies that at any time in the entire history of defendant Bank there ever existed any such combination between the individual defendants for the control of the stock of defendant Bank as is alleged in Paragraph 5 of the bill of complaint or otherwise or at all. It is true that the estate of Henry L. Pittock, of which defendants O. L. Price and Charles A. Morden are trustees, is and for several years last past has been the owner of 7,696 shares out of the total 20,000 shares of stock outstanding, and that defendant O. L. Price individually owns 290 shares and that other individuals and corporations own and hold shares of stock substantially to the number stated in Paragraph 5 of the bill of complaint, except that defendant Charles A. Morden has not been the owner of any shares of stock in defendant Bank since the year 1922. But no combination or con-

federation for the domination through control of a majority of the stock of defendant Bank has ever existed between this defendant and any other director or stockholder. [245] As they have reference to this defendant the allegations of Paragraph 5 of the bill of complaint with respect to such combination and control are without foundation in fact and are untrue and are denied.

VI.

Complainant, Fred A. Ballin, became a stockholder of defendant Bank on July 29, 1918, by the acquisition of 100 shares and thereafter and on July 1, 1922, he acquired an additional 100 shares. He continued to be such stockholder until October 18, 1926, at which time all of said stock was assigned and transferred and new certificates issued therefor to Francis P. Graves & Company of Los Angeles, California.

The allegations of Paragraph 6 of the bill of complaint to the effect that representations were made to induce complainant to acquire stock in defendant Bank are not pertinent or material to any issue herein. If an answer thereto be required, this defendant says that he did not solicit complainant to acquire stock in defendant Bank, or make any representations to complainant, of the kind alleged, or otherwise, to induce him to become a stockholder.

VII.

The directors of defendant Bank, including this defendant, took the oath of office prescribed by law before entering upon the performance of their

duties as such directors; and this defendant says that he has in no manner violated said oath of office but that on the contrary he has faithfully and honestly assumed and performed the duties and obligations of his office as such director.

VIII.

It is not the fact that Henry L. Pittock in his lifetime, or the trustees of his estate after his death, or any other [246] persons or interests identified with them, dominated or controlled defendant Bank from its organization down to March 29, 1927, or at any time. No such combination for control ever existed, as this defendant has pointed out in his answer to Paragraph 5 of the bill of complaint. Henry L. Pittock in his lifetime, and the trustees of his estate after his death, at no time have exercised or attempted to exercise in or about the affairs of defendant Bank any other or greater rights than those lawfully vested in them as owners of stock of defendant Bank. This defendant avers that during all the time he was a director of the defendant Bank that he was independent of the domination or control of any person, persons or corporation, and that at all such times he acted independently as he deemed to be for the best interest of the Bank and all of its stockholders.

IX.

Increases of capital and surplus of defendant Bank were made in substantially the amounts and at about the times stated in paragraph 9 of the bill of complaint. It is true also, although the fact is

not pertinent or material to any issue herein, that at the time the capital was increased to \$2,000,000 in 1922, the stockholders of defendant Bank, in order to strengthen its position and to offset inevitable and unavoidable losses due to the sudden deflation of values following the termination of the World War, also voluntarily paid in the sum of \$500,000, \$350,000 of which was credited to the earnings account, the remainder, \$150,000, going to surplus, thereby increasing the surplus account from \$250,000 to \$400,000.

X.

This defendant is unable to determine the nature of the charge made against the defendants in paragraph 10 of the bill of complaint. He denies specifically that he in any manner or to [247] any extent whatsoever, caused, required or directed to be lost the sums listed in said paragraph or any sum, or any assets of said Bank.

Each of the persons and corporations listed in said paragraph is indebted to defendant Bank and in some instances a portion of such indebtedness has been charged to profit and loss. But in each case, excepting the case of McCormick Lumber Company, the indebtedness is the result of inability on the part of the borrowers to repay when due loans made in the ordinary course of business at times and under circumstances such that this individual defendant was in no manner at fault in the extension of credit. In large part these loans were made prior to the year 1920, to borrowers then financially responsible and in most instances supported by

collateral entirely adequate at the time in value, and the inability of the borrowers to repay the loans when due resulted from the sudden and unexpected drop in merchandise and other values following the cessation of the World War. Since that time the officers of defendant Bank have been active and diligent in their efforts to collect said loans and substantial recoveries have been made and are still being made.

All loans made by defendant Bank to McCormick Lumber Company have been paid in full. The indebtedness now owing by said Lumber Company is the result of the acceptance by defendant Bank for credit to the account of the McCormick Lumber Company of certain checks and drafts, payment of which was later refused by the drawees. The acceptance of these checks and drafts for immediate credit was without the knowledge of this defendant and he had no notice thereof or opportunity whatever of preventing such crediting of checks or drafts, and he is in no respect chargeable with negligence or fault in respect thereto.

It is not the fact that this defendant in 1925 or at any time failed, neglected or refused to comply with any direction of any Bank Examiner or other representative of the [248] Comptroller of the Currency to reduce the line of credit granted to J. E. Wheeler or to any companies in which he was interested. All present indebtedness due from said Wheeler, Wheeler Timber Company, Wheeler Estate and Telegram Publishing Company, is the result of loans made several years prior to 1925

upon a sufficient showing of financial worth and supported in large part by adequate guaranties and/or collateral. Renewals of said loans were made from time to time when the borrowers were unable to pay at maturity, but it is not true that the Examiner of National Banks required the so-called Wheeler lines to be reduced because too much was loaned to one person, and such renewals were never granted in disobedience to any direction or against the advice of any Bank Examiner or other representative of the Comptroller of the Currency.

Further answering Paragraph 10 of the bill of complaint defendant says that he became a director of the defendant Bank on the 13th day of January, 1920. If complainant's bill is intended as a charge that losses were made in the amounts stated in Paragraph 10 because of improper loans, this defendant says that he was not a director when the loans were made and the loss resulting therefrom, if any, accrued before he assumed office; and since his assumption of office no act or omission on his part has increased or affected the amount of loss, if any, attributable to such loans.

XI.

The allegations of Paragraph 11 of the bill of complaint are untrue and are denied. Defendant Charles A. Morden was elected a director of defendant Bank on January 11, 1921, and served as such director until August 31, 1922, when he resigned, having sold his stock for a valuable consideration to defendant Mark Skinner. Defendant

Morden served as a member of the Examining Committee from the time of his election as a [249] director until the end of the year 1921 only. During this period the Examining Committee made regular reports to the directors and such reports were regularly spread upon the minutes of the meetings of the board of directors. But it is not the fact that said reports or any of them showed any condition of wrong administration or impending losses or any condition in the affairs of the defendant Bank requiring action by the directors to avoid loss. During this period and at all times the directors met regularly and carefully reviewed the reports of the Examining Committee and took such action in respect thereto as in the exercise of sound judgment seemed necessary. No reports were suppressed and nothing in the condition of the Bank was ever kept from the stockholders, and it is untrue that defendant Morden resigned as a director because of any such undisclosed condition in the affairs of the Bank.

It is untrue that at any time during the existence of the defendant Bank its Examining Committee made any report which would show a favorable but incorrect condition of the Bank or any report which showed any condition of said Bank except the true condition thereof as said Examining Committee found and believed to exist and attempted to disclose by its reports. All reports of the Examining Committee were made to the board of directors of the Bank only and were thereupon placed with the minutes of the meetings of the directors, at which said

reports were received, and thereupon all of said reports became available for examination by all stockholders of the Bank and by the District Bank Examiner and any other representative of the Comptroller of the Currency. All reports of the Examining Committee remained at all times and now remain in the minutes of the directors' meetings and were in fact read and their contents known to and understood by the District Bank Examiner, and could have been read and their contents known to and understood [250] by any stockholder of the Bank or any representative of the Comptroller of the Currency.

It is untrue that the Examining Committee ever made a confidential, private or secret report, or any report, to Mark Skinner, vice-president, or to other officers or directors of the Bank, which showed any condition different from that disclosed by any report made to the District Bank Examiner, or to the Comptroller of the Currency, but whether the Comptroller of the Currency in person received copies of all reports made by the Examining Committee to the board of directors, defendant cannot say, although he avers that copies of such reports of the Examining Committee were sent to the Comptroller of the Currency whenever requested.

XII.

This defendant is unable to determine what is attempted to be alleged in Paragraph 12 of the bill of complaint. Pursuant to the requirements of the by-laws of defendant Bank there was at all

times an executive committee consisting of a majority of the board of directors, which committee met weekly and passed on applications for credit and kept fully informed in regard to the purchase and sales of securities, loans on collateral, discounts and other business activities of defendant Bank. Regular monthly meetings of the board of directors were held at which the minutes of meetings of the Executive Committee were regularly read and submitted for approval.

There was also maintained at all times, in accordance and the by-laws of defendant Bank, an Examining Committee whose duty it was to investigate the affairs and business of defendant Bank twice in each year, and said committee during all of said times carefully investigated the affairs of defendant Bank and reported the results of such investigations to the board of [251] directors; and this defendant alleges that throughout the period mentioned in the complaint every effort was made by him with respect to all matters coming within the scope of his office or duty as a director to supervise and manage the affairs and business of defendant Bank faithfully and honestly.

On October 22, 1926, the Chief National Bank Examiner of the Twelfth Federal Reserve District advised Defendant Bank by letter of the result of an examination of its assets and stated that it would be necessary to provide additional funds to the amount of not less than \$1,000,000 in order that nonproducing assets in this total could be eliminated. Thereafter this defendant with other defendants,

acting with the approval of said Bank Examiner, undertook the organization of a corporation capitalized at \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank non-producing or "frozen" assets, as described in the report of said Bank Examiner. Such acting defendants made every effort to consummate said plan but were unable to do so. But thereafter, following a further examination by said Bank Examiner, it was determined to be necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000 and in addition guaranteed the payment of an additional sum of \$1,000,000 in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

The allegation that acts or omissions of this defendant [252] as a director or otherwise caused the defendant Bank to go into liquidation is untrue. Except as hereinabove in this answer to Paragraph 12 admitted, this defendant specifically denies each and every allegation of said Paragraph 12.

XIII.

It is not the fact that at any time this defendant

suppressed or concealed from stockholders any information regarding the condition of the Bank and it is not true that stockholders' meetings were in any respect manipulated or controlled by this defendant or by any person in combination with him. No such combination among stockholders as is alleged in paragraph 13 of the bill existed.

XIV.

The allegations of Paragraph 14 of the bill of complaint are untrue. This defendant did not participate in any way in the acquisition of stock in defendant Bank by J. E. Wheeler, or aid him in any particular in securing credit for, or in the financing of his purchase of said stock. On the contrary, said purchase by J. E. Wheeler of stock theretofore owned by Guy M. Standifer, L. B. Menefee and R. V. Jones was consummated without the knowledge or consent of this defendant.

XV.

The allegations of Paragraph 15 of the bill of complaint are untrue. This defendant at no time prevented or attempted to prevent or refused to allow the Telegram Publishing Company or J. E. Wheeler to sell the newspaper published by said Company. On the contrary, this defendant at all times after said J. E. Wheeler failed to pay his indebtedness to defendant Bank when due, urged that said Wheeler be required, so far as defendant Bank could so require it, to sell sufficient of his assets to enable him to repay his indebtedness to defendant Bank. [253] Defendants Metschan, Spaulding,

Charlton, Collins and Price, as directors, and defendant Morden, who was not a director, in 1925 or 1926, neither had nor attempted to exercise at any time any right to prevent the sale of the newspaper published by the Telegram Publishing Company, but at all such times said defendants, excluding defendant Morden, who was not then a director, urged upon the officers of defendant Bank that said Wheeler be required to make sales whenever possible and liquidate his indebtedness to defendant Bank.

XVI.

The allegations of Paragraph 16 of the bill of complaint are untrue. This defendant was fully aware in 1925 and 1926 of the extent to which the assets of defendant Bank were nonproductive or frozen, and at all times during said years, and during the preceding years, had striven faithfully and honestly to convert said frozen assets into bankable productive commercial paper.

In June, 1926, a committee appointed by the directors, consisting of defendants Price, Metschan and Stewart, conferred with the Comptroller of the Currency and requested him to have an examination made of the condition of the Bank so that with the approval of the Comptroller, or his representative, steps could be taken for the elimination of all nonproductive or frozen assets. Thereafter such an examination was made and other conferences were held with the Chief Bank Examiner of the Twelfth Federal Reserve District and the Comptroller, and thereafter and in December, 1926, with the ap-

proval of the Chief Bank Examiner and the Comptroller, defendant Bank and its directors determined to organize a corporation with a capital of \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing [254] \$57.50 for each share of Bank stock held by him, said new corporation to purchase and take over from defendant Bank nonproducing or frozen assets as designated in the reports of the Chief Bank Examiner.

This defendant and other defendants made every effort to consummate said plan but were unable to do so, and when it was ascertained that said plan could not be successfully carried through, it was determined to be necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000 and in addition guaranteed the payment of an additional sum of \$1,000,000 in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

This defendant at no time failed or refused to comply with any direction or request of the Comptroller of the Currency. On the contrary, he at all times worked in co-operation with him, in the effort to formulate and carry out a plan for the elimination of all nonproducing or frozen assets.

It is not the fact that during 1926, or 1927, as alleged in Paragraph 16 of the bill of complaint, any further loans were made or credit extended to J. E. Wheeler, either directly or upon his endorsement. On the contrary, these individual defendants, for a long time prior thereto, were endeavoring in every way within their power as directors, to secure the retirement, in part at least, of the indebtedness owing by said J. E. Wheeler and the companies in which he was interested.

No loans in excess of the amounts permitted by law were ever made by these defendants to J. E. Wheeler or to companies in [255] which he was interested or to any other persons, firms or corporations.

XVII.

The allegations of Paragraph 17 of the bill of complaint are untrue. Defendant Bank was never in a condition such that it was unable to pay its depositors upon demand until on March 28, 1927, a run upon the Bank occurred. Whereupon defendant Bank, in order to insure full and immediate payment to all depositors on demand, entered into a contract with United States National Bank and First National Bank of Portland under the terms of which said two Banks agreed to advance and loan to defendant Bank all moneys necessary to enable defendant Bank to pay its depositors on demand, defendant Bank pledging to said two Banks all of its assets as collateral to said loan and in addition certain of its stockholders, including the Estate of Henry L. Pittock, individually guaranteeing repayment of said loan; and thereupon defend-

ant Bank began liquidation of its assets in order to effect the payment of said loan to said two Banks.

Defendant O. L. Price was elected president of defendant Bank on March 1, 1927, but it is not the fact that thereafter the management of the Bank was left entirely to defendant Price, or that this defendant in any respect, or to any degree, delegated any of his duties as director to the president of the Bank, or to anyone else. And it is not true that in February, 1927, or in March, 1927, or at any other time, the directors, by the adoption of any plans or proposals before them could have avoided the condition which made necessary in their judgment the agreement with United States National Bank and First National Bank of Portland and the liquidation as hereinabove described. As to the supposed plans or proposals referred to in Paragraph 17 of the bill of complaint, this defendant says: [256]

First. No plan for reorganization of defendant Bank as a state Bank and trust company was ever developed or perfected so that it was possible of accomplishment. Such a plan was at one time suggested during the conferences with the Chief Bank Examiner hereinabove referred to, but it was rejected by defendant Bank and the Chief Bank Examiner in favor of the plan for transferring the frozen assets to a corporation to be organized with capital furnished by the stockholders of defendant Bank.

Second. So far as this defendant has ever been advised, J. E. Wheeler was never willing to turn over his assets for the protection of defendant Bank,

or for the benefit of his creditors, until long after the closing of defendant Bank, although at one time said Wheeler made an indefinite proposal for an assignment provided defendant Bank would advance large additional sums of money. This defendant did not deter or in any way prevent or dissuade said Wheeler from any such transfer of assets, but, on the contrary, was at all times anxious and willing and often demanded that said Wheeler liquidate his property and assets in any way possible so that his indebtedness to defendant Bank might be paid.

Further answering Paragraph 17 of the bill of complaint this defendant admits that the officers and directors of defendant Bank caused to be published, on March 2, 1927, the announcement quoted on page 22 of the bill, but it is not true that the directors of the Bank left the sole management and control to defendant Price or in any manner abdicated their responsibilities as directors. Nor is it true that the run on the Bank, which occurred almost four weeks later, was permitted by defendant Price or any of the then directors of the Bank, or that they refrained from doing everything in their power to prevent it.

The announcement so published on March 2, 1927, resulted from the fact that at that time the directors of defendant [257] Bank having been unable to carry through the plan for the organization of a corporation to take over nonproducing or frozen assets, decided that with the consent and approval of the Chief Bank Examiner, an assessment of 100% upon the capital stock of the Bank should

be made, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to insure payment to defendant Bank of the full amount to accrue from said 100% assessment.

XVIII.

It is not the fact that any secret or undisclosed agreements have been made as alleged in Paragraph 18 of the bill of complaint. The agreements said to have been placed in the custody of James B. Kerr are the agreements already referred to in this answer between defendant Bank and its guaranteeing stockholders on the one hand and the United States National Bank and the First National Bank of Portland on the other. Said agreements were not kept secret, but, on the contrary, were presented to and duly ratified at a meeting of the stockholders of defendant Bank held May 3, 1927, and said agreements were thereupon spread upon the minutes of the stockholders' meeting of May 3, 1927. At said meeting the shares of stock alleged in the bill to belong to complainant were represented by the proxy of the record owner, Francis P. Graves & Company, and said stock was duly voted at said meeting in favor of the ratification of said agreements, and the owner of said stock should be and is

estopped from objecting to the making of said agreements.

XIX.

It is not the fact that the directors of defendant Bank made or caused losses to said Bank in two million dollars, or in [258] any sum, nor is it the fact that the directors impaired the capital stock of the Bank or wilfully or intentionally depreciated or destroyed any investment in the stock of the Bank.

XX.

It is not the fact that this defendant gave out or published improperly or carelessly or negligently or unlawfully or at all any information about the internal affairs of the Bank. It is true that negotiations were had on one or more occasions for the sale and transfer to another bank of the assets, business, and goodwill of defendant Bank, and that the prospective purchaser was given such information about the properties offered for sale as was necessary to the negotiations. But the directors conducting such negotiations acted honestly and faithfully in the interest of defendant Bank and its stockholders, and at no time did they improperly disclose or make public the private affairs of the Bank or give out any information which in any way worked to the disadvantage of the Bank.

XXI.

This defendant is ready and willing to disclose any and all facts in his possession which may be relevant or pertinent to any issue herein. But all books and records of defendant Bank are, and at all

times have been, open to and available for inspection by the stockholders of defendant Bank, but none of said books or records is in the possession of this answering defendant.

XXII.

This defendant admits that defendant Bank is now claiming that complainant is indebted to defendant Bank. Except as thus admitted this defendant specially denies each and every allegation of Paragraph 22 of the bill of complaint.

Complainant is indebted to defendant Bank in the sum of \$10,000, with accrued and accruing interest. This indebtedness [259] complainant has for a number of years failed to pay, but has insisted upon renewals of his notes as they respectively matured. This defendant says that nothing in any of the matters attempted to be set out in complainant's bill justifies complainant's failure to pay his indebtedness to defendant Bank, but that defendant Bank should be permitted, notwithstanding complainant's demands herein, to enforce immediate payment by complainant of the principal and interest of his debt.

XXIII.

The answer made by this defendant to Paragraph 22 of the bill of complaint sufficiently answers Paragraph 23 of the bill. No accounting of any kind is due complainant from defendant Bank or from this defendant, and complainant should not be permitted to use the demands or claims asserted in his bill as an excuse for withholding payment of his overdue obligation to defendant Bank.

XXIV.

For answer to Paragraph 24 of the bill of complaint this defendant says that the bill is without equity. This defendant and defendant Bank have not at any time refrained, and are not now refraining, from any necessary or proper step for the redress of any wrong done to defendant Bank, but nothing in any of the matters attempted to be stated in the bill justifies the charge that this defendant has committed any wrong upon defendant Bank, and no stockholder, prior to the institution of a suit brought by a stockholder, one Charles A. Burckhardt, simultaneously with the filing of this bill, has ever made any complaint to defendant Bank, or its directors, of any such wrong, nor has any demand ever been made for the redress of any such supposed wrong. [260]

This defendant denies that he now controls or ever has controlled the affairs of defendant Bank and avers that at all times in his actions as a director and as a stockholder he has been faithful in the performance of his duties as a director and faithful to the rights of the Bank and of its stockholders.

For a further and separate answer and by way of abatement of this suit, this defendant says that complainant is without right, authority, or qualification to bring this proceeding, and the proceeding should be abated and dismissed.

Complainant is not, and at the time of commencing this suit was not, a stockholder of defendant Bank. On October 18, 1926, complainant endorsed

and transferred to Francis P. Graves & Company the stock in defendant Bank theretofore owned by him, and at his direction said stock was thereupon transferred upon the books of defendant Bank and new certificates therefor issued to the transferee. Since October 18, 1926, complainant has not been a stockholder in defendant Bank.

WHEREFORE, this defendant, having fully answered the bill of complaint herein, prays that he be hence dismissed with costs and his disbursements herein taxed against complainant.

DEY, HAMPSON & NELSON,

Attorneys for the Defendant.

ALFRED A. HAMPSON,

Of Counsel. [261]

State of Oregon,

County of Multnomah,—ss.

I, Phil Metschan, make solemn oath and say: I am the defendant named in and makes the foregoing answer; so much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge, and so much thereof as concerns the acts and deeds of any other person or persons I believe to be true.

PHIL METSCHAN,

Subscribed and sworn to before me this 19th day of December, 1927.

[Seal]

ALFRED A. HAMPSON,

Notary Public for Oregon.

My commission expires August 22, 1928.

State of Oregon,
County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 19th day of December, 1927, by receiving a copy thereof, duly certified to as such by Alfred A. Hampson, of attorneys for defendant Phil Metschan.

W. C. BRISTOL,
Attorney for Plaintiff.

Filed December 19, 1927. [262]

AND AFTERWARDS, to wit, on the 19th day of December, 1927, there was duly filed in said court, an answer of Charles A. Morden, in words and figures as follows, to wit: [263]

[Title of Court and Cause.]

ANSWER OF DEFENDANT CHARLES A.
MORDEN.

Now comes the defendant, Charles A. Morden, and answering the bill of complaint herein, says:

I.

This answering defendant has no knowledge as to the present residence or citizenship of complainant. At the time he became a stockholder in defendant Bank, and for a number of years thereafter, he was a citizen and resident of Oregon and this defendant is not advised as to the claimed

present residence and citizenship and the diversity of citizenship asserted as a result thereof.

Defendant Chauncey McCormick is a resident and citizen of the State of Illinois.

Defendant The Northwestern National Bank is a national banking association organized under the banking laws of the United States and doing business in the city of Portland, Oregon.

Defendants O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metschan, Frederick F. Pittock, Mark Skinner, [264] Charles K. Spaulding, Charles H. Stewart and James F. Twohy are and for a number of years last past have been directors of defendant The Northwestern National Bank, and each was and is a citizen and resident of Oregon.

Defendant Charles A. Morden is a citizen and resident of Oregon, and he was at one time a director of defendant The Northwestern National Bank.

It is true that defendants O. L. Price and Charles A. Morden are trustees under the last will and testament of Henry J Pittock, deceased, and that defendant Charles A. Morden is an officer of Oregonian Publishing Company, a corporation, but this defendant avers that neither of said facts is in any respect pertinent or material to any issue herein. This defendant believes that the reference to said facts in complainant's bill is for some ulterior purpose and constitutes impertinence.

Defendant Emery Olmstead was, prior to March 1, 1927, president and a director of defendant Bank. On that day he was succeeded as such president by

defendant O. L. Price, who theretofore had been chairman of the board of directors of defendant Bank.

II.

This defendant is unable to determine from the bill of complaint herein what amount, if any, is involved in this suit, and he leaves complainant to his proof of the allegation that a sum in excess of \$3,000.00 is involved.

III.

This defendant is unable to determine from the bill of complaint herein whether the banking statutes referred to in Paragraph 3 of the bill are, as there asserted, a part of and involved with the subject matter of this suit, and denies that the laws referred to in Paragraph 3 of the bill are a part of [265] or involved in this suit.

IV.

It is not the fact that any wrongs have been committed against the defendant Bank for which the defendants, who are or were directors, have at any time been unwilling to seek redress. On the contrary, the defendants, who are and were directors, and each of them, at all times have been ready and willing, and now are ready and willing to sue and to call to account any and all persons or parties in any manner responsible for wrongs to defendant Bank.

It is not the fact that before the filing of the bill of complaint herein any demand was made upon defendant Bank or upon the individual defendants as its directors, to correct or right the matters referred to as wrongs in the bill of complaint; on the contrary, neither complainant, nor any stock-

holder of defendant Bank has at any time made any complaint, charge, or statement to defendant Bank or any of its directors, that any such alleged wrongs had been suffered; nor has complainant or any stockholder ever demanded or requested that any step of any kind be taken to redress such supposed wrongs or to enforce any duties or liabilities of the individual defendants as directors of defendant Bank or otherwise.

Complainant is not in fact a stockholder of defendant Bank. As will be more fully stated hereinafter in this answer, complainant more than a year prior to the filing of this suit assigned and caused to be transferred to Francis P. Graves & Company, of Los Angeles, California, all of the shares of stock in defendant Bank then held by him, and since that time complainant has not been and is not now a stockholder of defendant Bank.

Complainant is not and for more than a year prior to [266] the institution of this suit, has not been, a stockholder of defendant Bank, but if the allegations of Paragraph 4 of the bill of complaint are to be construed as asserting that the owner or owners of the stock formerly held by complainant have not at all times enjoyed each and all of the rights vested in them as stockholders, this defendant denies the charge. The allegations that the individual defendants through majority control of stock were or are adverse or antagonistic to complainant or any stockholder, or were or are attempting through such control to carry out a plan designed to injure defendant Bank and its minority stockholders, and each and all of the statements

and insinuations of the last subparagraph of Paragraph 4 of the bill of complaint, are without any foundation in fact and are untrue and are denied.

V.

This defendant denies that at any time in the entire history of defendant Bank there ever existed any such combination between the individual defendants for the control of the stock of defendant Bank as is alleged in Paragraph 5 of the bill of complaint or otherwise or at all. It is true that the estate of Henry L. Pittock, of which defendants O. L. Price and Charles A. Morden are trustees, is and for several years last past has been the owner of 7,696 shares out of the total 20,000 shares of stock outstanding, and that defendant O. L. Price individually owns 290 shares and that other individuals and corporations own and hold shares of stock substantially to the number stated in Paragraph 5 of the bill of complaint, except that defendant Charles A. Morden has not been the owner of any shares of stock in defendant Bank since the year 1922. But on combination or confederation for the domination through control of a majority of the stock of defendant Bank has ever existed between this defendant and any other director or stockholder. [267] As they have reference to this defendant the allegations of Paragraph 5 of the bill of complaint with respect to such combination and control are without foundation in fact and are untrue and are denied.

VI.

Complainant, Fred A. Ballin, became a stock-

holder of defendant Bank on July 29, 1918, by the acquisition of 100 shares and thereafter and on July 1, 1922, he acquired an additional 100 shares. He continued to be such stockholder until October 18, 1926, at which time all of said stock was assigned and transferred and new certificates issued therefor to Francis P. Graves & Company of Los Angeles, California.

The allegations of Paragraph 6 of the bill of complaint to the effect that representations were made to induce complainant to acquire stock in defendant Bank are not pertinent or material to any issue herein. If an answer thereto be required, this defendant says that he did not solicit complainant to acquire stock in defendant Bank, or make any representation to complainant, of the kind alleged, or otherwise, to induce him to become a stockholder.

VII.

The directors of defendant Bank, including this defendant, took the oath of office prescribed by law before entering upon the performance of their duties as such directors; and this defendant says that he has in no manner violated said oath of office but that on the contrary he has faithfully and honestly assumed and performed the duties and obligations of his office as such director.

VIII.

It is not the fact that Henry L. Pittock in his lifetime, or the trustees of his estate after his death, or any other [268] persons or interests identified with them, dominated or controlled defendant Bank

from its organization down to March 29, 1927, or at any time. No such combination for control ever existed, as this defendant has pointed out in his answer to Paragraph 5 of the bill of complaint. Henry L. Pittock in his lifetime, and the trustees of his estate after his death, at no time have exercised or attempted to exercise in or about the affairs of defendant Bank any other or greater rights than those lawfully vested in them as owners of stock of defendant Bank. This defendant avers that during all the time he was a director of the defendant Bank that he was independent of the domination or control of any person, persons or corporation, and that at all such times he acted independently as he deemed to be for the best interests of the Bank and all of its stockholders.

IX.

Increases of capital and surplus of defendant Bank were made in substantially the amounts and at about the times stated in Paragraph 9 of the bill of complaint. It is true also, although the fact is not pertinent or material to any issue herein, that at the time the capital was increased to \$2,000,000 in 1922, the stockholders of defendant Bank, in order to strengthen its position and to offset inevitable and unavoidable losses due to the sudden deflation of values following the termination of the World War, also voluntarily paid in the sum of \$500,000, \$350,000 of which was credited to the earnings account, the remainder, \$150,000, going to surplus, thereby increasing the surplus account from \$250,000 to \$400,000.

X.

This defendant is unable to determine the nature of the charge made against the defendants in Paragraph 10 of the bill of complaint. He denies specifically that he in any manner or to [269] any extent whatsoever, caused, required or directed to be lost the sums listed in said paragraph or any sum, or any assets of said Bank.

Each of the persons and corporations listed in said paragraph is indebted to defendant Bank and in some instances a portion of such indebtedness has been charged to profit and loss. But in each case, excepting the case of McCormick Lumber Company, the indebtedness is the result of inability on the part of the borrowers to repay when due loans made in the ordinary course of business at times and under circumstances such that this individual defendant was in no manner at fault in the extension of credit. In large part these loans were made prior to the year 1920, to borrowers then financially responsible and in most instances supported by collateral entirely adequate at the time in value, and the inability of the borrowers to repay the loans when due resulted from the sudden and unexpected drop in merchandise and other values following the cessation of the World War. Since that time the officers of defendant Bank have been active and diligent in their efforts to collect said loans and substantial recoveries have been made and are still being made.

All loans made by defendant Bank to McCormick Lumber Company have been paid in full. The indebtedness now owing by said Lumber Company is

the result of the acceptance by defendant Bank for credit to the account of the McCormick Lumber Company of certain checks and drafts, payment of which was later refused by the drawees. The acceptance of these checks and drafts for immediate credit was without the knowledge of this defendant and he had no notice thereof or opportunity whatever of preventing such crediting of checks or drafts, and he is in no respect chargeable with negligence or fault in respect thereto.

It is not the fact that this defendant in 1925 or at any time failed, neglected or refused to comply with any direction of any Bank Examiner or other representative of the [270] Comptroller of the Currency to reduce the line of credit granted to J. E. Wheeler or to any companies in which he was interested. All present indebtedness due from said Wheeler, Wheeler Timber Company, Wheeler Estate and Telegram Publishing Company, is the result of loans made several years prior to 1925 upon a sufficient showing of financial worth and supported in large part by adequate guarantees and/or collateral. Renewals of said loans were made from time to time when the borrowers were unable to pay at maturity, but it is not true that the Examiner of National Banks required the so-called Wheeler lines to be reduced because too much was loaned to one person, and such renewals were never granted in disobedience to any direction or against the advice of any Bank Examiner or other representative of the Comptroller of the Currency.

Further answering Paragraph 10 of the bill of complaint defendant says that he became a director

of the defendant Bank on the — day of —, 192—. If complainant's bill is intended as a charge that losses were made in the amounts stated in Paragraph 10 because of improper loans, this defendant says that he was not a director when the loans were made and the loss resulting therefrom, if any, accrued before he assumed office; and since his assumption of office no act or omission on his part has increased or affected the amount of loss, if any, attributable to such loans.

XI.

The allegations of Paragraph 11 of the bill of complaint are untrue and are denied. Defendant Charles A. Morden was elected a director of defendant Bank on January 11, 1921, and served as such director until August 31, 1922, when he resigned, having sold his stock for a valuable consideration to defendant Mark Skinner. Defendant Morden served as a member of the Examining Committee from the time of his election as a [271] director until the end of the year 1921 only. During this period the Examining Committee made regular reports to the directors and such reports were regularly spread upon the minutes of the meetings of the board of directors. But it is not the fact that said reports or any of them showed any condition of wrong administration or impending losses or any condition in the affairs of the defendant Bank requiring action by the directors to avoid loss. During this period and at all times the directors met regularly and carefully reviewed the reports of the Examining Committee and took

such action in respect thereto as in the exercise of sound judgment seemed necessary. No reports were suppressed and nothing in the condition of the Bank was ever kept from the stockholders, and it is untrue that defendant Morden resigned as a director because of any such undisclosed condition in the affairs of the Bank.

It is untrue that at any time during the existence of the defendant Bank its Examining Committee made any report which would show a favorable but incorrect condition of the Bank or any report which showed any condition of said Bank except the true condition thereof as said Examining Committee found and believed to exist and attempted to disclose by its reports. All reports of the Examining Committee were made to the board of directors of the Bank only and were thereupon placed with the minutes of the meetings of the directors, at which said reports were received, and thereupon all of said reports became available for examination by all stockholders of the Bank and by the District Bank Examiner and any other representative of the Comptroller of the Currency. All reports of the Examining Committee remained at all times and now remain in the minutes of the directors' meetings and were in fact read and their contents known to and understood by the District Bank Examiner, and could have been read and their contents known to and understood [272] by any stockholder of the Bank or any representative of the Comptroller of the Currency.

It is untrue that the Examining Committee ever

made a confidential, private or secret report, or any report, to Mark Skinner, vice-president, or to other officers or directors of the Bank, which showed any condition different from that disclosed by any report made to the District Bank Examiner, or to the Comptroller of the Currency, but whether the Comptroller of the Currency in person received copies of all reports made by the Examining Committee to the board of directors, defendant cannot say, although he avers that copies of such reports of the Examining Committee were sent to the Comptroller of the Currency whenever requested.

XII.

This defendant is unable to determine what is attempted to be alleged in Paragraph 12 of the bill of complaint. Pursuant to the requirements of the by-laws of defendant Bank there was at all times an executive committee consisting of a majority of the board of directors, which committee met weekly and passed on applications for credit and kept fully informed in regard to the purchase and sales of securities, loans on collateral, discounts and other business activities of defendant Bank. Regular monthly meetings of the board of directors were held at which the minutes of meetings of the executive committee were regularly read and submitted for approval.

There was also maintained at all times, in accordance with the by-laws of defendant Bank, an examining committee whose duty it was to investigate the affairs and business of defendant Bank twice in each year, and said committee during all of said

times carefully investigated the affairs of defendant Bank and reported the results of such investigations to the board of [273] directors; and this defendant alleges that throughout the period mentioned in the complaint every effort was made by him with respect to all matters coming within the scope of his office or duty as a director to supervise and manage the affairs and business of defendant Bank faithfully and honestly.

On October 22, 1926, the Chief National Bank Examiner of the Twelfth Federal Reserve District advised defendant Bank by letter of the result of an examination of its assets and stated that it would be necessary to provide additional funds to the amount of not less than \$1,000,000 in order that nonproducing assets in this total could be eliminated. Thereafter this defendant with other defendants, acting with the approval of said Bank Examiner, undertook the organization of a corporation capitalized at \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing \$37.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank nonproducing or "frozen" assets, as described in the report of said Bank Examiner. Such acting defendants made every effort to consummate said plan but were unable to do so. But thereafter, following a further examination by said Bank Examiner, it was determined to be necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Es-

tate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000 and in addition guaranteed the payment of an additional sum of \$1,000,000 in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

The allegation that acts or omissions of this defendant [274] as a director or otherwise caused the defendant Bank to go into liquidation is untrue. Except as hereinabove in this answer to Paragraph 12 admitted, this defendant specifically denies each and every allegation of said Paragraph 12.

XIII.

It is not the fact that at any time this defendant suppressed or concealed from stockholders any information regarding the condition of the Bank and it is not true that stockholders' meetings were in any respect manipulated or controlled by this defendant or by any person in combination with him. No such combination among stockholders as is alleged in Paragraph 13 of the bill existed.

XIV.

The allegations of Paragraph 14 of the bill of complaint are untrue. This defendant did not participate in any way in the acquisition of stock in defendant Bank by J. E. Wheeler, or aid him in any particular in securing credit for, or in the financing

of his purchase of said stock. On the contrary, said purchase by J. E. Wheeler of stock theretofore owned by Guy M. Standifer, L. B. Menefee and R. V. Jones was consummated without the knowledge or consent of this defendant.

XV.

The allegations of Paragraph 15 of the bill of complaint are untrue. This defendant at no time prevented or attempted to prevent or refused to allow the Telegram Publishing Company or J. E. Wheeler to sell the newspaper published by said Company. On the contrary, this defendant at all times after said J. E. Wheeler failed to pay his indebtedness to defendant Bank when due, urged that said Wheeler be required, so far as defendant Bank could so require it, to sell sufficient of his assets to enable him to repay his indebtedness to defendant Bank. [275] Defendants Metschan, Spaulding, Charlton, Collins and Price, as directors, and defendant Morden, who was not a director, in 1925 or 1926, neither had nor attempted to exercise at any time any right to prevent the sale of the newspaper published by the Telegram Publishing Company, but at all such times said defendants, excluding defendant Morden, who was not then a director, urged upon the officers of defendant Bank that said Wheeler be required to make sales whenever possible and liquidate his indebtedness to defendant Bank.

XVI.

The allegations of Paragraph 16 of the bill of

complaint are untrue. This defendant was fully aware in 1925 and 1926 of the extent to which the assets of defendant Bank were nonproductive or frozen, and at all times during said years, and during the preceding years, had striven faithfully and honestly to convert said frozen assets into bankable productive commercial paper.

In June, 1926, a committee appointed by the directors, consisting of defendants Price, Metschan and Stewart, conferred with the Comptroller of the Currency and requested him to have an examination made of the condition of the Bank so that with the approval of the Comptroller, or his representative, steps could be taken for the elimination of all nonproductive or frozen assets. Thereafter such an examination was made and other conferences were held with the Chief Bank Examiner of the Twelfth Federal Reserve District and the Comptroller, and thereafter and in December, 1926, with the approval of the Chief Bank Examiner and the Comptroller, defendant Bank and its directors determined to organize a corporation with a capital of \$1,500,000, one-half thereof to be provided by the stockholders of defendant Bank, each stockholder subscribing [276] \$57.50 for each share of bank stock held by him, said new corporation to purchase and take over from defendant Bank nonproducing or frozen assets as designated in the reports of the Chief Bank Examiner.

This defendant and other defendants made every effort to consummate said plan but were unable to do so, and when it was ascertained that said plan

could not be successfully carried through, it was determined to be necessary to levy a full 100% assessment upon the stockholders of defendant Bank, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000 and in addition guaranteed the payment of an additional sum of \$1,000,000 in order to insure payment to the Bank of the full amount to accrue from said 100% assessment.

This defendant at no time failed or refused to comply with any direction or request of the Comptroller of the Currency. On the contrary, he at all times worked in co-operation with him, in the effort to formulate and carry out a plan for the elimination of all nonproducing or frozen assets.

It is not the fact that during 1926, or 1927, as alleged in Paragraph 16 of the bill of complaint, any further loans were made or credit extended to J. E. Wheeler, either directly or upon his endorsement. On the contrary, these individual defendants, for a long time prior thereto, were endeavoring in every way within their power as directors, to secure the retirement, in part at least, of the indebtedness owing by said J. E. Wheeler and the companies in which he was interested.

No loans in excess of the amounts permitted by law were ever made by these defendants to J. E. Wheeler or to companies in [277] which he was

interested or to any other persons, firms or corporations.

XVII.

The allegations of Paragraph 17 of the bill of complaint are untrue. Defendant Bank was never in a condition such that it was unable to pay its depositors upon demand until on March 28, 1927, a run upon the Bank occurred. Whereupon defendant Bank, in order to insure full and immediate payment to all depositors on demand, entered into a contract with United States National Bank and First National Bank of Portland under the terms of which said two Banks agreed to advance and loan to defendant Bank all moneys necessary to enable defendant Bank to pay its depositors on demand, defendant Bank pledging to said two Banks all of its assets as collateral to said loan and in addition certain of its stockholders, including the Estate of Henry L. Pittock, individually guaranteeing repayment of said loan; and thereupon defendant Bank began liquidation of its assets in order to effect the payment of said loan to said two Banks.

Defendant O. L. Price was elected president of defendant Bank on March 1, 1927, but it is not the fact that thereafter the management of the Bank was left entirely to defendant Price, or that this defendant in any respect, or to any degree, delegated any of his duties as director to the president of the Bank, or to anyone else. And it is not true that in February, 1927, or in March, 1927, or at any other time, the directors, by the adoption of any plans or proposals before them could have avoided

the condition which made necessary in their judgment the agreement with United States National Bank and First National Bank of Portland and the liquidation as hereinabove described. As to the supposed plans or proposals referred to in Paragraph 17 of the bill of complaint, this defendant says: [278]

First. No plan for the reorganization of defendant Bank as a state Bank and trust company was ever developed or perfected so that it was possible of accomplishment. Such a plan was at one time suggested during the conferences with the Chief Bank Examiner hereinabove referred to, but it was rejected by defendant Bank and the Chief Bank Examiner in favor of the plan for transferring the frozen assets to a corporation to be organized with capital furnished by the stockholders of defendant Bank.

Second. So far as this defendant has ever been advised, J. E. Wheeler was never willing to turn over his assets for the protection of defendant Bank, or for the benefit of his creditors, until long after the closing of defendant Bank, although at one time said Wheeler made an indefinite proposal for an assignment provided defendant Bank would advance large additional sums of money. This defendant did not deter or in any way prevent or dissuade said Wheeler from any such transfer of assets, but, on the contrary, was at all times anxious and willing and often demanded that said Wheeler liquidate his property and assets in any way possible so

that his indebtedness to defendant Bank might be paid.

Further answering Paragraph 17 of the bill of complaint this defendant admits that the officers and directors of defendant Bank caused to be published, on March 2, 1927, the announcement quoted on page 22 of the bill, but it is not true that the directors of the Bank left the sole management and control to defendant Price or in any manner abdicated their responsibilities as directors. Nor is it true that the run on the Bank, which occurred almost four weeks later, was permitted by defendant Price or any of the then directors of the Bank, or that they refrained from doing everything in their power to prevent it.

The announcement so published on March 2, 1927, resulted from the fact that at that time the directors of defendant [279] Bank having been unable to carry through the plan for the organization of a corporation to take over nonproducing or frozen assets, decided that with the consent and approval of the Chief Bank Examiner, an assessment of 100% upon the capital stock of the Bank should be made, whereupon certain stockholders, including the Estate of Henry L. Pittock, holding 7,696 shares, undertook and agreed to purchase and pay the assessment upon any and all stock sold for failure to pay the assessment, and in furtherance of said agreement said stockholders advanced the sum of \$1,000,000, and in addition guaranteed the payment of an additional sum of \$1,000,000, in order to

insure payment to defendant Bank of the full amount to accrue from said 100% assessment.

XVIII.

It is not the fact that any secret or undisclosed agreements have been made as alleged in Paragraph 18 of the bill of complaint. The agreements said to have been placed in the custody of James B. Kerr are the agreements already referred to in this answer between defendant Bank and its guaranteeing stockholders on the one hand and the United States National Bank and the First National Bank of Portland on the other. Said agreements were not kept secret, but, on the contrary, were presented to and duly ratified at a meeting of the stockholders of defendant Bank held May 3, 1927, and said agreements were thereupon spread upon the minutes of the stockholders' meeting of May 3, 1927. At said meeting the shares of stock alleged in the bill to belong to complainant were represented by the proxy of the record owner, Francis P. Graves & Company, and said stock was duly voted at said meeting in favor of the ratification of said agreements, and the owner of said stock should be and is estopped from objecting to the making of said agreements.

XIX.

It is not the fact that the directors of defendant Bank made or caused losses to said Bank in two million dollars, or in [280] any sum, nor is it the fact that the directors impaired the capital stock of the Bank or wilfully or intentionally depreciated

or destroyed any investment in the stock of the Bank.

XX.

It is not the fact that this defendant gave out or published improperly or carelessly or negligently or unlawfully or at all any information about the internal affairs of the Bank. It is true that negotiations were had on one or more occasions for the sale and transfer to another Bank of the assets, business, and goodwill of defendant Bank, and that the prospective purchaser was given such information about the properties offered for sale as was necessary to the negotiations. But the directors conducting such negotiations acted honestly and faithfully in the interest of defendant Bank and its stockholders, and at no time did they improperly disclose or make public the private affairs of the Bank or give out any information which in any way worked to the disadvantage of the Bank.

XXI.

This defendant is ready and willing to disclose any and all facts in his possession which may be relevant or pertinent to any issue herein. But all books and records of defendant Bank are, and at all times have been, open to and available for inspection by the stockholders of defendant Bank, but none of said books or records is in the possession of this answering defendant.

XXII.

This defendant admits that defendant Bank is now claiming that complainant is indebted to de-

defendant Bank. Except as thus admitted this defendant specifically denies each and every allegation of Paragraph 22 of the bill of complaint.

Complainant is indebted to defendant Bank in the sum of \$10,000, with acerued and accruing interest. This indebtedness [281] complainant has for a number of years failed to pay, but has insisted upon renewals of his notes as they respectively matured. This defendant says that nothing in any of the matters attempted to be set out in complainant's bill justifies complainant's failure to pay his indebtedness to defendant Bank, but that defendant Bank should be permitted, notwithstanding complainant's demands herein, to enforce immediate payment by complainant of the principal and interest of his debt.

XXIII.

The answer made by this defendant to Paragraph 22 of the bill of complaint sufficiently answers Paragraph 23 of the bill. No accounting of any kind is due complainant from defendant Bank or from this defendant, and complainant should not be permitted to use the demands or claims asserted in his bill as an excuse for withholding payment of his overdue obligation to defendant Bank.

XXIV.

For answer to Paragraph 24 of the bill of complaint this defendant says that the bill is without equity. This defendant and defendant Bank have not at any time refrained, and are not now refraining, from any necessary or proper step for the re-

dress of any wrong done to defendant Bank, but nothing in any of the matters attempted to be stated in the bill justifies the charge that this defendant has committed any wrong upon defendant Bank, and no stockholder, prior to the institution of a suit brought by a stockholder, one Charles A. Burckhardt, simultaneously with the filing of this bill, has ever made any complaint to defendant Bank, or its directors, of any such wrong, nor has any demand ever been made for the redress of any such supposed wrong. [282]

This defendant denies that he now controls or ever has controlled the affairs of defendant Bank and avers that at all times in his actions as a director and as a stockholder he has been faithful in the performance of his duties as a director and faithful to the rights of the Bank and of its stockholders.

For a further and separate answer and by way of abatement of this suit, this defendant says that complainant is without right, authority, or qualification to bring this proceeding, and the proceeding should be abated and dismissed.

Complainant is not, and at the time of commencing this suit was not, a stockholder of defendant Bank. On October 18, 1926, complainant endorsed and transferred to Francis P. Graves & Company the stock in defendant Bank theretofore owned by him, and at his direction said stock was thereupon transferred upon the books of defendant Bank and new certificates therefor issued to the transferee.

Since October 18, 1926, complainant has not been a stockholder in defendant Bank.

WHEREFORE, this defendant, having fully answered the bill of complaint herein, prays that he be hence dismissed with costs and his disbursements herein taxed against complainant.

D. P. PRICE and
JOHN F. LOGAN,
Attorneys for the Defendant.

JOHN F. LOGAN,
Of Counsel. [283]

State of Oregon,
County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 19th day of December, 1927, by receiving a copy thereof, duly certified to as such by John F. Logan, of attorneys for defendant Charles A. Morden.

W. C. BRISTOL,
Attorney for Complainant.

Filed December 19, 1927. [284]

AND AFTERWARDS, to wit, on Tuesday, the 27th day of December, 1927, the same being the 37th judicial day of the regular November term of said court,—Present the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [285]

[Title of Court and Cause.]

MINUTES OF COURT—DECEMBER 27, 1927—
ORDER GRANTING MOTION OF DEFENDANT CHAUNCEY McCORMICK TO QUASH SERVICE OF SUBPOENA AND DISMISS THE SUIT AS TO HIM.

This proceeding came before the Court on December 19, 1927, upon motion of defendant Chauncey McCormick, appearing specially for the purpose of the motion only, to quash service of subpoena and to dismiss the suit as to him, said defendant appearing by Messrs. James B. Kerr and Charles A. Hart, his attorneys, and complainant appearing by William C. Bristol, Esq., his attorney; and it appearing from the record herein that said defendant Chauncey McCormick is a resident and inhabitant of the Northern District of Illinois, Eastern Division at Chicago, Illinois, and that complainant is a resident and [286] inhabitant of the Southern District of California, and that the said defendant Chauncey McCormick is not suable in the District of Oregon wherein this suit is brought;

Therefore it is

ORDERED that the motion of defendant Chauncey McCormick be and the same is hereby allowed and that this suit be and the same is hereby dismissed as to defendant Chauncey McCormick.

Dated this 27th day of December, 1927.

R. S. BEAN,
District Judge.

Filed December 27, 1927. [287]

AND AFTERWARDS, to wit, on the 9th day of January, 1928, there was duly filed in said court, an answer of defendant Emery Olmstead, in words and figures as follows, to wit: [288]

[Title of Court and Cause.]

ANSWER OF RESPONDENT EMERY OLMSTEAD.

Now comes the respondent Emery Olmstead, and for answer to complainant's complaint admits, denies and alleges, as follows:

I.

Respondent says that it is true that Fred A. Ballin, complainant, is a resident and citizen of the State of California, and that Chauncey McCormick is a resident and citizen of the State of Illinois, and that The Northwestern National Bank is an association organized under the laws of the United States for carrying on the business of banking under and pursuant to the statutes, to wit, Section 5133, and other statutes of the kind and character mentioned in complainant's bill.

It is also true that O. L. Price, A. D. Charlton, E. S. Collins, Natt McDougall, Phil Metschan,

Frederick F. Pittock, Mark Skinner, Charles K. Spaulding, Charles H. Stewart and James F. Twohy were and are the directors of The Northwestern National Bank, and that each of them is a citizen and resident of the State of [289] Oregon.

It is also true that Charles A. Morden, together with O. L. Price are trustees of the H. L. Pittock estate, and that for part of the time mentioned in complainant's bill Charles A. Morden was a director of said Bank and was one of the members of the Examining Committee of said Bank.

It is also true that Emery Olmstead was president of the Northwestern National Bank from some time in 1919 until the last of February, 1927, and in this connection respondent says that on the 28th day of February, 1927, respondent resigned as president and director, and the said O. L. Price succeeded him as president of said Bank; that since said time the respondent Emery Olmstead has had nothing whatever to do with The Northwestern National Bank, either as an official of said Bank, or otherwise.

II

Respondent admits the allegations contained in Paragraphs 2 and 3 of complainant's complaint.

III.

Answering the allegations contained in Paragraph 4, this respondent says that it is not true that he at any time committed any act and/or acts for the purpose of injuring the stockholders, and in this connection respondent says that every act

done or performed by him while he was a member of the board of directors, or while he was acting as president, was done for the purpose of benefiting the Bank and enabling it to pay dividends to the stockholders.

In connection with the allegation in complainant's bill that demand was made upon the directors prior to the institution of this suit, this respondent says that he was not on the board [290] of directors at said time, and was not engaged in directing the affairs of the said Bank.

It is true that complainant is a holder of capital stock of The Northwestern National Bank, and it is true that the said Charles A. Burckhardt, complainant, was not a member of the board of directors at the time of the happening of the affairs delineated in said bill of complaint.

It is not true that this respondent ever at any time dominated or controlled the said Bank, nor is it true that this respondent at any time did anything to injure or destroy the value of the minority stockholders' stock.

Each and every other allegation contained in said paragraph, this respondent specifically denies.

IV.

Answering the allegations contained in Paragraph 5, your respondent says that Charles A. Morden, at one time director and member of the board of said Bank, and O. L. Price, as trustees of the H. L. Pittock estate, controlled seventy-six hundred and ninety-six (7696) shares of the capital

stock of said Bank, and that, in addition thereto, O. L. Price personally holds and has under his control two hundred and ninety (290) shares, and that Frederick F. Pittock holds one hundred (100) shares, and it is also true that Charles A. Morden individually held at one time fifty (50) shares, and that by reason of said holdings Price and Morden control or are in a position to control the said Bank;

And in this connection your respondent alleges that in the year 1922, and while Charles A. Morden was one of the trustees of the H. L. Pittock estate and possessed of certain duties in relation to said trusteeship, the said Charles A. Morden sold his fifty (50) shares of stock and resigned as a director and as a [291] member of the Examining Committee; that in connection with his duties while acting on the Examining Committee, the said Charles A. Morden, prior to said time, had occasion to and did pass upon practically all of the loans mentioned in Paragraph 10 of complainant's bill; that by resigning from the Examining Committee and board of directors of The Northwestern National Bank, the said Charles A. Morden refused to perform his duties as required of him by law and under his trusteeship of the H. L. Pittock estate.

V.

Answering the allegations contained in Paragraph 6, your respondent says that it is true that complainant was solicited to be and become a stockholder, and was persuaded to purchase two hun-

dred (200) shares of the capital stock of The Northwestern National Bank at the market value of twenty-seven thousand five hundred dollars (\$27,500.00), and received certificates numbered 101 and 153 for two hundred (200) shares, and ever since has been the owner of said stock; and it is true also that complainant was informed that the condition of said Bank with H. L. Pittock, then living, as president, and with the Pittock fortune and influence, was good and prosperous, and the directors, or some of them, stated that the Bank had made unusual progress and had an unequalled foundation and support in the Oregonian Publishing Company.

VI.

Answering the allegations contained in Paragraph 7, this respondent says that it is true that the directors took the oath of office and agreed to conduct the affairs of said Bank in conformity with the law; and in this respect your respondent [292] says that, so far as he was able, he did conduct the said Bank in conformity with the rules and regulations and the law appertaining to National Banks, and that between the years of 1920 and 1926, inclusive, under the management of your respondent, The Northwestern National Bank made in profits a sum in excess of one million four hundred thousand dollars (\$1,400,000.00); that because of the matters and things hereinafter set forth, to which reference is hereby made, the earnings were not used for the payment of dividends, but were used, because of the peculiar situation existing at said

time, to take care of losses on what is commonly called "bad loans."

VII.

Answering the allegations contained in Paragraph 8, your respondent says that the H. L. Pittock estate trustees, and those associated with them and identified with them, controlled and directed the affairs of The Northwestern National Bank in the selection and maintenance of the directors and officers of the said Bank.

VIII.

Answering the allegations contained in Paragraph 9, your respondent denies that the capital of said Bank was apparent, and states in this connection that the capital was real, and approximately as alleged in Paragraph 9 of complainant's bill.

IX.

Answering the allegations contained in Paragraph 10, your respondent says that at the time of the happening of the events and transactions narrated in Paragraph 10, or most of them, and particularly in 1918 and 1919 during the World War, your respondent [293] was actively engaged, by and with the knowledge, consent and appointment of the board of directors, in securing business for said Bank, making eastern connections, and, during the World War, in raising money for the United States Government in that he had charge of all of the Liberty Loan drives, including the Victory Loan, five in number, in the city of Portland, Oregon; that your respondent was also

Chairman of the War Camp Community Service of the State of Oregon, and also chairman of the committee of fifteen for the development of the west channel of the river and Swan Island and Guild's Lake, a project involving a ten million dollar expenditure; that your respondent during said times also caused to be organized the Columbia-Pacific Steamship Company, which was organized after the war, and which company was developed up to the point where it operated eleven boats running to the Orient out of the city of Portland; that these duties, together with numerous other duties, necessarily demanded of your respondent a great deal of time, and that, by reason of the numerous duties devolving upon your respondent, he was not able to give personal attention to all of the loans made by the said Bank, and in order that your respondent might make the necessary connections in a financial way, secure new accounts, and build up the said Bank, there was appointed a number of vice-presidents of said Bank, which appointments were made by the board of directors of the said Bank, and at the same time the said board of directors placed the said vice-presidents in charge of certain loans, giving them full power to investigate the persons or bodies corporate applying for a loan prior to the making of the same; that said vice-presidents were required to report to the board of directors upon the safety of the said loans, and your respondent of necessity had to rely upon such investigations and sworn statements of the applicant for loans; that this method employed

by your respondent, and directed by the [294] board of directors, was the usual, ordinary and customary method of handling loans made by banks of the kind and character of the Northwestern National Bank.

That in regard to Item 1, in Paragraph 10, your respondent says that the loan made to the Dufur Orchards Company was originally seventy thousand dollars (\$70,000.00), and that said company owned large orchard tracts near Dufur, Oregon, and that your respondent opposed any further loans to the said Orchards Company; that thereupon a committee was appointed to examine into the affairs of said Orchards Company; that this committee visited the said tract and approved of a loan and/or loans in excess of six hundred thousand dollars (\$600,000.00), in that they recommended that the Bank purchase three hundred thousand dollars (\$300,000.00) of bonds that were in default upon the said property, and thereafter a majority of the board caused to be advanced to the said Orchards Company a total sum of six hundred thousand dollars (\$600,000.00); that your respondent objected to this loan, but was overruled by a majority of the board, and your respondent was compelled to take more than three hundred thousand dollars (\$300,000.00) out of the earnings of said Bank to charge the asset down to where he felt it was safe.

In regard to Item 2 of said Paragraph 10, your respondent says that this was a war loan approved by the board of directors; that it proved not to be

good, but in this connection your respondent says that careful investigation was made of the financial standing and plans of the said A. O. Anderson, and that the said loan was made in good faith so far as your respondent is concerned, believing at the time that the Bank was safe in making said loan; and in this connection your respondent says that he, while acting as president of said Bank, was successful in apprehending A. O. Anderson in the city of New York, and after suit brought in said courts collected [295] a sum in excess of sixty thousand dollars (\$60,000.00), and that said sum mentioned in said complaint should be reduced by said amount.

In regard to Item 3, your respondent says that he did not have charge of said loan to A. Rupert & Co.; that the same was handled by other officials of the Bank and after due investigation by them, and that he relied upon the investigation made by the other bank officials. Your respondent admits that said loan was a loss to said Bank.

In regard to Item 4, your respondent says that it is not true that he made this loan, but on the contrary avers that said loan was handled by a vice-president and said business was obtained by said vice-president, and said loan was based upon the statements made by said Bankers Discount Corporation and the investigation of said vice-president, and the same was made in the ordinary course of business so far as your respondent is concerned.

Your respondent says that all of the other items mentioned in said specifications, numbered from 6 to 16, inclusive, were made in approximately the same manner and after due investigation, and in

this connection your respondent desires to state that the loan made to J. E. Wheeler was one made after due investigation; that at the time said loan was made, or shortly thereafter, the said loan was amply secured; that there is now in the possession of said Bank security protecting said loan of the reasonable value of a sum of money in excess of six hundred thousand dollars (\$600,000.00); that The Northwestern National Bank had various and sundry guaranties of the said J. E. Wheeler, which guaranties in effect provided that J. E. Wheeler would pay not only his own direct obligations, but all of the obligations of any and all of his companies, including the McCormick Lumber Company, the Wheeler Timber Company, the W. E. Wheeler Estate, and the Telegram Publishing [296] Company, and in this connection your respondent alleges that the statement of J. E. Wheeler in February of 1925, showed assets as follows:

Accounts Receivable	315,000.00
Notes Receivable.....	456,330.00
Timber stocks, bank stocks, etc.....	4,400,000.00
50% The Portland Telegram.....	400,000.00
60% McCormick Lumber Company...	600,000.00
1/4 interest W. E. Wheeler estate.....	1,000,000.00
Real Estate	102,000.00

\$7,273,330.00

and that said statement showed a net worth of more than six million dollars (\$6,000,000.00); that in addition to the statement above delineated, The Northwestern National Bank had statements from

the different companies in which J. E. Wheeler was interested showing their net worth, and that the total net worth of all of the companies in which J. E. Wheeler was interested was in excess of eighteen million dollars (\$18,000,000.00); that your respondent had made some independent investigation of the financial worth of J. E. Wheeler, particularly with regard to the value of his timber holdings, and your respondent had come to the conclusion that the said J. E. Wheeler under-estimated rather than over-estimated the value of his different holdings; that a recent statement of the holdings and interests of the said J. E. Wheeler shows that the said J. E. Wheeler, after all obligations of every kind and character are paid, has a net worth of four million six hundred ten thousand dollars (\$4,610,000.00).

That the loan to the McCormick Lumber Company, mentioned in Item 13, has been paid out of a bond issue placed against the property of the McCormick Lumber Company.

That the loan made to the Wheeler Timber Company and the loan made to the W. E. Wheeler Estate have the endorsements of J. E. Wheeler and W. M. Wheeler; that the same are safe loans, and will be paid in full out of the assets of J. E. Wheeler and/or [297] W. M. Wheeler.

That the loan made to the Telegram Publishing Company is endorsed by J. E. Wheeler and L. R. Wheeler, and that there are ample assets to pay said loan in full.

That the following is a personal statement of the interests, and the value of the same, including the liabilities, of J. E. Wheeler:

ASSETS:	
Timber Holdings.....	\$6,102,000.00
Real Estate.....	75,000.00
Stock in McCormick Lumber Co.....	81,000.00
Stock in Northwestern National Bank.....	705,000.00
Accounts Receivable due from McCormick Lum- ber Company.....	1,572,000.00
Grand Total.....	<hr/> \$8,535,000.00
LIABILITIES:	
Personal	\$1,278,400.00
Telegram Publishing Co.....	549,750.00

LIABILITIES:	
Bowles judgment	70,000.00
McCormick Lumber Co.....	1,572,000.00
Ralph Schneeloch Co.....	60,500.00
	<hr/>
	3,530,650.00
Law costs, liquidation and readjustment and un-	
listed liabilities	194,350.00
Other liabilities.....	200,000.00
	<hr/>
Surplus	\$4,610,000.00

That said statement shows that, after all of J. E. Wheeler's obligations have been paid, both contingent and otherwise, he still has for his own estate the sum of four million six hundred ten thousand dollars (\$4,610,000.00); and that the District Examiner of Banks stated to your respondent that he was satisfied that J. E. Wheeler was in a stable financial condition during the years of 1926 and 1927.

Your respondent says that it is true that the Examiner of National Banks asked that Wheeler's lines be reduced, upon the [298] ground that there was too much loaned by said Bank to one person, and to this end your respondent consulted with J. E. Wheeler and L. R. Wheeler, the owners of the Telegram Publishing Company, and at said time, or thereabouts, your respondent succeeded in finding a purchaser, ready, willing and able to purchase the "Telegram" and its plant for the sum of nine hundred thousand dollars (\$900,000.00) cash; that L. R. Wheeler signed a written option to sell the same; that J. E. Wheeler refused to sell the plant for such a price, and thereupon the said J. E. Wheeler consulted with the other members of the board of directors of The Northwestern National Bank, to wit, O. L. Price, Phil Metschan, E. S. Collins, A. D. Charlton and Charles K. Spaulding, who were members of the executive committee, and notwithstanding the demands of the National Bank Examiner, and notwithstanding the request of your respondent that said "Telegram" be sold and said lines of credit be reduced, each and every member

of said committee refused to allow or permit a sale of the said paper; that had said sale been made, the entire indebtedness of the Telegram Publishing Company would have been paid to said Bank, and some four hundred thousand dollars (\$400,000.00) would have been available for the said J. E. Wheeler to pay other obligations of his said companies to the Bank at said time; that it was because of the failure of the directors above named to back up the request of your respondent that your respondent was unable to reduce the lines of credit enjoyed by J. E. Wheeler and/or his companies.

That in order to comply with the said National Bank Examiner's request, your respondent also tried to negotiate the sale of various timber tracts owned by the said J. E. Wheeler, or in which he had an interest; that because of the lumber conditions then existing, it was difficult and almost impossible to make a sale of the said timber holdings in a short period of time; that [299] had the other members of the board of directors worked with your respondent, a sale of the "Telegram" would have been consummated, and the indebtedness of the said J. E. Wheeler and/or his companies would have been largely paid.

Your respondent further says that it is not true that the Bank was forced into liquidation by reason of said loans, and in this connection your respondent says that said loans were not public property and were not known generally to the public. Your respondent avers that the said Bank was forced into liquidation because of false and malicious

rumors about its solvency; that in this connection your respondent says that false and malicious rumors were circulated in and about the city of Portland, causing an unprecedented run upon the said Bank; that during the first day alone of said run the said Bank paid out a sum of money in the approximate amount of three million dollars (\$3,000,000.00) to depositors; that in nine months' time the said Northwestern National Bank has paid out to depositors eighteen million three hundred thousand dollars (\$18,300,000.00), and that all of said moneys came from assets of the Bank, and not from any guaranties of any kind or character, and in this connection your respondent is informed and believes, and therefore alleges, that the depositors have been paid in full and that there will be available for the stockholders some two million five hundred thousand dollars (\$2,500,000.00).

X.

Answering the allegations contained in Paragraph 11, your respondent says that so long as he was president of the said Bank he kept the stockholders informed of the affairs of the said Bank, and did not suppress any information to which the said stockholders were entitled, nor did he suppress any information to which the directors were entitled. [300]

Your respondent says that it is true that Charles A. Morden resigned as director, and admits that Charles K. Spaulding succeeded him, and that thereafter Phil Metschan, Charles K. Spaulding and

A. D. Charlton constituted the Examining Committee.

Your respondent says that it is true that the said Examining Committee made one report to the Comptroller of the Currency of the United States and a different report to Mark Skinner, vice-president, and that said report was different in that, among other things, it criticized certain loans or lines of credit, and did not reveal said criticisms to the Comptroller.

Your respondent denies each and every other allegation, specifically and generally, contained in said paragraph.

XI.

In regard to the allegations contained in Paragraph 12, your respondent denies all that portion of the same which has not been alleged or admitted heretofore, and states that he recommended that a new bank be organized, and that to this arrangement the said Bank Examiner agreed and all arrangements had been made to take out of said Bank the slow paper and frozen assets; that all of the stock in the new bank had been subscribed for, and all preliminary action had been taken by the board of directors, with the exception of securing a charter for the said new bank; that all of said organization and preliminary matters had been agreed to by all of the members of the board of directors when, without notice or reason of any kind or character, O. L. Price, then controlling the said Northwestern National Bank by reason of his stock, announced that he would not go ahead with the deal; that had

said organization of said new bank been made, and the proceedings had as agreed to by the board of directors and as approved by the National Bank Examiner, all of the slow paper and frozen assets [301] would have been placed in a separate corporation, and the new bank would have been able to pay dividends and carry on as a successful banking institution, and neither the depositors' nor any of the stockholders' interests would have been jeopardized, and no one would have sustained a loss.

That there was subscribed for said new bank the sum of two million dollars (\$2,000,000.00) in capital, and two hundred thousand dollars (\$200,000.00) in surplus.

That your respondent at all the times while he was either president, vice-president or director of said Bank, used all of his knowledge, skill and experience gained over a period of thirty-odd years of banking to carry said institution along in the manner provided by law, and in accordance with good banking system; that for more than ten years your respondent, through acquiring new connections and new business, was able to earn enough to pay dividends every year had not conditions arisen over which your respondent had no control.

XII.

In answering Paragraph 13 your respondent says that he at no time suppressed or concealed from this complainant, or any other shareholder, any of the facts to which they were entitled, and admits that the trustees for the H. L. Pittock estate, and

their associates, controlled and managed the said Bank and had the power so to do.

XIII.

Answering Paragraph 14 your respondent says that O. L. Price, L. B. Menefee, R. V. Jones and Guy M. Standifer, through their stock control, did attempt to sell The Northwestern National Bank in 1923 to the United States National Bank, and in this [302] connection your respondent says that an officer of The Northwestern National Bank, to wit, O. L. Price, prior to the liquidation of the Bank, offered to sell the said Bank to the First National Bank; that all of these matters and things caused rumors and reports to be circulated, or had a tendency to, and hampered and harassed your respondent in building up the said Bank.

That your respondent did not have anything to do with the offer of sale of said Bank at said time, and in this regard your respondent asks that the complainant be required to make proof of the remaining allegations in said paragraph.

XIV.

Answering the allegations contained in Paragraph 15, your respondent says that it is true that during the latter part of 1925 and the fore part of 1926, the directors of said Bank were informed that the Telegram Publishing Company might be sold for the price of nine hundred thousand dollars (\$900,000.00), and that if the said Telegram had been sold for said price it would have liquidated all

of the Telegram's indebtedness and the greater portion of the indebtedness of J. E. Wheeler and/or his companies at the said Bank; and it is also true that had the Telegram been sold, and had the Bank used the security it then held of J. E. Wheeler's, it could have collected all the money owed by J. E. Wheeler and/or his companies in February of 1927; that the value of said securities and the offer for the Telegram was sufficient in amount to have liquidated all of the indebtedness of J. E. Wheeler and/or his companies; and it is also true that directors Metschan, Spaulding, Charlton, Morden, Collins and Price refused to allow or permit the said Telegram to be sold, and by this action of the members of the board your respondent was prevented from liquidating all of Wheeler's indebtedness; that said action on the part of [303] said directors was arbitrary, and without any just cause or reason.

XV.

In answer to Paragraph 16, your respondent says that it is not true that the statement book under "Items in Transit" would show the slow loans; that, on the contrary, said statement book would show every day all out-of-town checks either accepted as cash or sent for collection, so that all checks that went through the Bank, of whatever kind or character, if they were checks on other banks, would be shown on the statement book under "Items in Transit," and that this record at all times was available of and concerning any check of any depositor's account, and that if the other di-

rectors of the Bank did not know what checks were in transit, or what checks were accepted for deposit, it was because they did not care to know and refused to be informed.

In other respects, your respondent admits the allegations contained in Paragraph 16, except as the same is in this answer varied or qualified, and except that your respondent denies that he at any time had any intent, or knowledge of any action by the board, to impair the assets of said Bank, and in this connection, and by way of explanation of the action of your respondent of and concerning the matters alleged in said paragraph, your respondent alleges that J. E. Wheeler held approximately twenty-three and one-half per cent ($23\frac{1}{2}\%$) of the stock in The Northwestern National Bank, and that he, the said Wheeler, did not have sufficient money, in case said organization described in Paragraph 16 of complainant's complaint was made, to take his portion of the stock to be subscribed for and paid for in the new liquidating company, and in order that this deal might be carried through this respondent secured a purchaser, ready, able and willing to buy the "Portland Telegram" at the price of nine hundred thousand dollars (\$900,000.00), [304] as hereinbefore delineated, and your respondent prays that the explanation of said sale heretofore delineated be read in connection with this paragraph.

XVI.

In answer to Paragraph 17, and subheadings

“First” and “Second,” and the allegations contained in Paragraphs 18, 19, 20, 21, 22, 23 and 24 of said bill of complaint, your respondent says that the matters therein delineated and alleged were matters which happened after he resigned from the board of directors, and after he had resigned as president, and he has no knowledge of the same, and therefore denies the same, and asks that proof be made of said allegations, and in this connection, in regard to the requests of the National Bank Examiner as alleged in said paragraphs, your respondent says that it is not true that he refused to carry out said deal, but, on the contrary, your respondent urged the board of directors to carry out said deal and stated at said time that it was the only alternative of said Bank and that if said plan was carried out it would meet the approval of the Comptroller and the National Bank Examiner; that notwithstanding the recommendations of your respondent, O. L. Price, afterwards president of said Bank, stated that he had decided not to carry it through; and that it was due to such transactions as this, and the false rumors circulated about said Bank, that the same was forced into liquidation, and not otherwise, and that said Bank was not forced into liquidation because of any precarious condition, as is shown by the matters and things hereinbefore set forth. [305]

WHEREFORE, This respondent prays that com-

plainant's bill may be dismissed, and that he recover his costs and disbursements herein.

SHEPPARD, PHILLIPS & RALSTON,
Attorneys for Respondent, Emery Olmstead.
CHESTER A. SHEPPARD,
Of Counsel.

United States of America,
State and District of Oregon,
County of Multnomah,—ss

I, Emery Olmstead, being first duly sworn, depose and say that I am one of the respondents in the above-entitled suit; and that the foregoing answer is true, as I verily believe.

(Sgd.) EMERY OLMSTEAD.

Subscribed and sworn to before me this 6th day of January, 1928.

[Notarial Seal]

(Sgd.) WM. C. RALSTON,
Notary Public for Oregon.

My commission expires January 11, 1929.

State of Oregon,
County of Multnomah,—ss.

Due service of the foregoing answer of respondent Emery Olmstead by copy, as prescribed by law is hereby admitted, at Portland, Oregon, this 9th day of January, 1928.

W. C. BRISTOL,
Attorney for Complainant.

Filed January 9, 1928 [305A]

AND AFTERWARDS, to wit, on Wednesday, the 11th day of July, 1928, the same being the 8th judicial day of the regular July Term of said court,—Present the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [306]

In the District Court of the United States for the District of Oregon.

IN EQUITY—E.—8939.

FRED A. BALLIN,

Complainant,

vs.

THE NORTHWESTERN NATIONAL BANK,
CHARLES K. SPAULDING, PHIL
METSCHAN, A. D. CHARLTON, E. S.
COLLINS, CHAUNCY McCORMICK,
NATT McDOUGALL, FREDERICK F.
PITTOCK, MARK SKINNER, CHARLES
H. STEWART, O. L. PRICE, EMERY
OLMSTEAD, JAMES F. TWOHY and
CHARLES A. MORDEN,

Respondents.

MINUTES OF COURT—JULY 11, 1928—DE-
CREE.

This cause came on to be heard on June 18, 1928, at this term, and the Court heard evidence offered on behalf of the respective parties hereto and argu-

ments of counsel; thereupon, upon consideration thereof, it was ORDERED, ADJUDGED, AND DECREED as follows, viz:

That the complainant failed to establish the allegations of his bill of complaint; that said bill is without equity and complainant is entitled to no relief as to the defendants, and said bill of complaint and cause of suit as to said defendants is hereby dismissed, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the said defendants have and recover of the complainant their respective costs and disbursements herein to be taxed.

Done this 11th day of July, 1928.

R. S. BEAN,
Judge.

Filed July 11, 1928. [307]

And to wit, on the 13th day of May, 1929, there was duly filed in said court a statement of the evidence, in words and figures as follows, to wit:
[329]

In the District Court of the United States in and
for the District of Oregon.

IN EQUITY—No. E.-8936.

CHARLES A. BURCKHARDT,

Complainant,

vs.

THE NORTHWESTERN NATIONAL BANK,
CHARLES K. SPAULDING, PHIL
METSCHAN, A. D. CHARLTON, E. S.
COLLINS, CHAUNCEY McCORMICK,
NATT McDOUGALL, FREDERICK F.
POTTOCK, MARK SKINNER, CHARLES
H. STEWART, O. L. PRICE, EMERY
OLMSTEAD, JAMES F. TWOHY and
CHARLES A. MORDEN,

Respondents.

No. E.-8939.

FRED A. BALLIN,

Complainant,

vs.

THE NORTHWESTERN NATIONAL BANK,
CHARLES K. SPAULDING, PHIL
METSCHAN, A. D. CHARLTON, E. S.
COLLINS, CHAUNCEY McCORMICK,
NATT McDOUGALL, FREDERICK F.
PITTOCK, MARK SKINNER, CHARLES
H. STEWART, O. L. PRICE, EMERY
OLMSTEAD, JAMES F. TWOHY and
CHARLES A. MORDEN,

Respondents.

STATEMENT OF THE EVIDENCE.

The evidence shows that the defendant, The Northwestern National Bank was organized in the year 1912, and that the defendants Olmstead and Charlton then became and continued to be stockholders and [330—1] directors of said Bank, December 23, 1912.

All of the other directors, defendants named, acquired their stock and became directors on and prior to the 9th day of January, 1922. E. S. Collins became a director in 1923; O. L. Price and Charles A. Morden as trustees for H. L. Pittock became and were the representatives in his stead June 12, 1922; Emery Olmstead, trustee, became and was the holder of 3821 shares July 1, 1922 (R., pp. 2-15).

The evidence showed the by-laws of this bank were adopted from time to time and that a rewritten series of by-laws culminating with March 31, 1925, was amended and later put in the book.

Up to the time of Pittock's death in 1919 he was president and chairman of the board and some time after his death a separate office of chairman of the board was created which O. L. Price assumed, and the by-laws were changed so as to provide for this separate office and to enlarge the duties and responsibilities. By-law 1 provided,

(7) "Chairman of the Board: The Chairman of the Board shall preside at all meetings of the shareholders, the Board of Directors, and the

Executive Committee. With the Executive Committee and president, and pursuant to and under the control of the Board of Directors he shall direct the general policy of the association. When the Board and/or the Executive Committee be not in session it shall be the duty of the Chairman to confer with the president and other executive officers concerning all banking matters or matters of importance. He shall hold office for the current year for which he is elected, unless he shall resign, become disqualified, or be removed, and any vacancy occurring in the office shall be filled by the remaining members of the board of directors." (R. 23.) [331—2]

(13) "Executive Committee: The Board of Directors shall at the first meeting after the annual election elect an executive committee consisting of not less than seven members, to be chosen from the board of directors, and of which the chairman of the board, president, and one of the vice-presidents shall be members. Each member of the committee shall continue to be a member thereof until the expiration of his term of office as director, but shall be subject to removal at any time by an affirmative vote of a majority of the whole board.

The executive committee, when the board of directors is not in session, unless otherwise ordered by and subject to the board, shall possess and may exercise all the powers of the board of directors in the management of the affairs of the association. From time to time it may appoint, empower, direct, receive reports from, and discharge such commit-

tee as, in its discretion, it may consider useful in the proper conduct of the affairs of the association.

It shall be the duty of the executive committee to keep fully informed in regard to current business of the association and, when the board is not in session, to superintend the transaction thereof; to pass upon, supervise, regulate and control lines of credit, investments of funds of the bank, purchases and sales of securities, loans or collateral, discounts, and purchases of bills, notes or other evidences of debt, and purchases and sales of bills of exchange; to fix all salaries and compensations paid or payable by the association, except as otherwise declared in the by-laws or by resolution of the board of directors; to fill any vacancy in the committee by election of a member of the board of directors, to be confirmed by the board at its next meeting, and, in the event of the absence of any member of the executive committee, in its discretion to appoint a member of the board of directors to fill the place of such absent member, to serve during such absence.

The committee shall meet at least once each week and a majority of the members of the committee shall constitute a quorum thereof necessary for the transaction of business.

The committee shall appoint a secretary, whose duty it shall be to record the proceedings of the committee in full in a minute book of the bank, to be kept and provided for such purpose, and the record of such proceedings shall be signed by all members of the committee participating therein.

Such record shall be open at all times to the inspection of any member of the board of directors, and all action by the executive committee shall be reported to the board of directors at its meeting next succeeding such action.” (R., pp. 24, 25.)

Pursuant to that by-law, Price was secretary [332—3] of the executive committee for a while and was succeeded by Mark Skinner but the Bank had an executive committee from the outset.

On January 9, 1923, Sec. 6 of the by-laws of the Bank was amended to read as follows:

“Sec. 6. President. The president shall be the chief executive officer of the bank, reporting to the Executive Committee and the Board of Directors when the Board of Directors and/or Executive Committee shall be in session. It shall be the duty of the president to confer with the Chairman of the Board and other executive officers concerning all matters of importance or policy. He shall fix the salaries and compensation of all employees of the bank not elected or appointed by the Board of Directors or the Executive Committee. He shall hold office for the current year for which the Board of which he is a member was elected, unless he shall resign or become disqualified, or be removed. And any vacancy occurring in the office of president shall be filled by the remaining members of the Board of directors.” (R., p. 27.)

(17) “Directors’ Meetings. The board of directors shall hold regular meetings on the third Wednesday of each month, and should that day at any time fall upon a holiday, the regular meeting

for that day shall be held on the following day. The board may also hold special meetings upon the call of the chairman, the president, either vice-president, cashier, or any three or more members, and whenever there shall not be a quorum at a regular or special meeting, the members present may adjourn the meeting from day to day until a quorum shall be obtained; and any meeting may be adjourned from time to time by vote of a majority of a quorum present, but no business except adjournment shall be transacted in the absence of a quorum. The board shall at its monthly meetings, or oftener, examine and approve or disapprove the report of the executive committee, such action to be recorded in the minutes of the meeting.” (R., p. 30.)

(19) “Compensation of Directors. Each director, unless he shall be paid a regular salary by the bank, shall receive the sum of ten (\$10.00) dollars for attendance at any regular or special meeting of the board of directors; and each director, unless he shall be paid a regular salary by the bank, shall receive the sum of twenty (\$20.00) dollars for [333—4] attendance at any regular or special meeting of the executive committee, whether a quorum be present or not.” (R., p. 31.)

(25) “Forms of books and account. The Board of Directors shall have power to prescribe, and when expedient to change, the form of books and accounts to be used in the transaction of business of this bank, and to prescribe the general or particu-

lar manner in which its affairs shall be conducted.” (R., p. 31.)

(30) “Examination. The Board shall at least once in each year and as much oftener as in its discretion shall be deemed advisable, cause a thorough examination of the bank to be made for the purpose of ascertaining if its affairs are in sound and solvent condition and recommending to the officers such changes in manner of doing business as shall seem advisable. The result of each examination shall be reported to the Board at the next regular meeting thereafter. For the purpose of making such examinations the Board of Directors may employ such expert assistance as in its judgment is deemed advisable. Each member of the Examining Committee who shall engage in conducting such examination, shall be paid at the rate of \$10.00 per day for time actually expended in making such examination.” (R., p. 32.)

(19) “Compensation of directors: Each director *otherwise* he shall be paid a regular salary by the bank, shall receive the sum of \$10.00 for attendance at any regular or special meeting of the board of directors, or the Executive Committee, whether a quorum be present or not.” (R., p. 33.)

On January 8, 1924, the directors met, including Price, Olmstead, Metschan, Spaulding, Pittock, Collins, Natt McDougall and Skinner, and at that time Sec. 13 of the by-laws of the Bank hereinbefore set forth was amended to read as follows:

(13) “Executive Committee. The Board of Directors shall at the first meeting after the annual

election elect an Executive Committee consisting of not less than seven members, to be chosen from the Board of Directors and of which the Chairman of the Board, President, and one of the vice-presidents shall be members. Each member of the Committee shall continue to be a member thereof until the expiration of his term of office as director, but shall be subject [334—5] to removal at any time by an affirmative vote of a majority of the whole Board. The Executive Committee, when the Board of Directors is not in session, unless otherwise ordered by and subject to the Board, shall possess and may exercise all the powers of the board of directors in the management of the affairs of the association. From time to time it may appoint, empower, direct, receive reports from, and discharge such committees as, in its discretion, it may consider useful in the proper conduct of the affairs of the association.

It shall be the duty of the Executive Committee to keep fully informed in regard to current business of the association and, when the Board is not in session, to superintend the transactions thereof; to pass upon, supervise, regulate and control lines of credit, investments of funds of the bank, purchases and sales of securities, loans on collateral, discounts, and purchases of bills, notes and other evidences of debt, and purchases and sales of bills of exchange; to fix all salaries and compensations paid or payable by the association, except as otherwise declared in the by-laws or by resolution of the Board of Directors; to fill any vacancy in the Com-

mittee by election of a member of the Board of Directors, to be confirmed by the Board at its next meeting, and, in the event of the absence of any member of the Executive Committee, in its discretion to appoint a member of the Board of Directors to fill the place of such absent member, to serve during such absence. The Committee shall meet at least once each week, and a majority of the members of the Committee shall constitute a quorum thereof necessary for the transaction of business. The Committee shall appoint a secretary whose duty it shall be to record the proceedings of the Committee in full in a minute book of the bank, to be kept and provided for such purpose, and the record of such proceedings shall be signed by all members of the Committee participating therein. Such record shall be open at all times to the inspection of any member of the Board of Directors, and all action by the Executive Committee shall be reported to the Board of Directors at its meeting next succeeding such action.” (R., pp. 33, 34.)

Sec. 19 of the by-laws heretofore set forth was amended to read as follows:

(19) “Compensation of Directors. Each director, unless he shall be paid a regular salary by the bank, shall receive the sum of ten (\$10.00) dollars for attendance at any regular or special meeting of the board of directors; and each director, unless he shall be paid a regular salary by the bank, shall receive a sum of twenty (\$20.00) dollars for attendance at any regular or special meeting of the

[335—6] Executive Committee, whether a quorum be present or not.” (R., p. 35.)

The evidence showed that the commencement of the transactions with J. E. and L. R. Wheeler and the “Evening Telegram” (afterwards “The Telegram Publishing Company”) commenced the 2d of March, 1915 (R., p. 38) with a loan of \$25,000 to the “Evening Telegram,” the notes to be endorsed by J. E. and L. R. Wheeler, and on July 13, 1915, this was increased to \$50,000 on similar conditions, and on July 17, 1917, this was increased to a line of \$60,000, and on August 20, 1918, this was increased again to \$70,000; and on September 17, 1918, on condition that “The Telegram Publishing Company” be guaranteed and endorsed by J. R. and L. E. Wheeler, the Bank passed a credit of \$100,000. All these transactions were through the executive committee.

On January 11, 1921, Charlton, Kelly, Morden, Metschan, McDougall, Olmstead, Nichols, Price, Pittock, Sensenich and Menafee, then acting as directors, named the executive and Examining Committee of and from their personnel; Charlton, Kelly and Morden becoming members of such committee and the salary of the president, Emery Olmstead was fixed at \$25,000 (which thereafter continued down to the close of the Bank at never less than \$20,000 a year (R., 88), some reductions having taken place in the meeting of January 10, 1922, as to all the officers) Skinner and Stewart at \$15,000 and \$12,000 respectively, O. L. Price as vice-

president at \$9,000, and subordinate officers at other sums. [336—7]

Subsequently, in July, 1921, the aforesaid executive committee approved advances to the Bankers Discount Corporation and notes and accounts specifically enumerated.

On December 10, 1921, Kelly, Charlton and Morden as the Examining Committee, pursuant to the foregoing resolution appointing them, made a report which for the purposes of this case, except in a few minor particulars, remains substantially the standard form for the Examining Committee except as elsewhere pointed out in the entire course of the transactions involved in these proceedings, and the same is as follows:

“Portland, Oregon, December 10, 1921.

To the Board of Directors of the Northwestern National Bank of Portland, Portland, Oregon.

Gentlemen:

We, the undersigned, your Committee appointed to examine into the affairs of the Northwestern National Bank of Portland, report that on the 1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th and 10th days of December, 1921, we made a full and careful examination of the affairs of this bank as of date of December 1, 1921.

We counted the cash; examined bonds and all other securities; we very carefully checked the notes, collateral and real estate. We checked the outstanding and certified checks, cashier's checks, time and demand certificates of deposit and over-

drafts; we verified the outstanding stock certificates; verified the first clearings; examined the expense account and general affairs of the bank, making a full and complete examination of same.

We found the books correct; that the bank is in good condition and that the value at which the assets are carried on the books is fully justified.

Respectfully yours,

(Signed) GEO. H. KELLY

(Signed) A. D. CHARLTON

(Signed) C. A. MORDEN" (R., 87.)

[337—8]

Following this Mr. Morden nominated Mr. Charlton, Mr. Kelly and Mr. Petschan at the annual meeting of 1921 as an Examining Committee, and the directorate continued as before.

On January 10, 1922, the stockholders authorized an increase in the capital stock, and on March 6, 1922, the directors acted with respect to said matter as follows:

"At a special meeting of the Board of Directors of the Northwestern National Bank, of Portland, Oregon, there were present Messrs. Olmstead, Charlton, Metschan, Morden, Menefee, Skinner, Sensenich and Price, Mr. Olmstead presiding.

Upon motion of Mr. Menefee, seconded by Mr. Metschan, the following resolution was unanimously passed.

RESOLVED that, the increased capital stock of this corporation authorized by the stockholders at the annual meeting be offered for sale at \$150 per share, and that the present stockholders be given

until April 1, 1922, within which to subscribe to their proportionate share of the increased stock, and that the full amount of the subscription to the increased capital stock shall be paid for in cash on or before June 15, 1922.

There being no further business to come before the meeting, it then adjourned.

(Signed) EMERY OLMSTEAD,
Chairman." (R., 92.)

On the next day, March 7, 1922, an executive committee meeting on the suggestion of Messrs. Metschan and Charlton the committee authorized an advancement on *Receiver*' Certificates to the Dufur Orchards Company, one-half of such amount as might be necessary to care for the orchard up to approximately \$17,500, and at that time there was a cancellation of the credit to the Phez Company to the amount of \$100,000. [338—9]

“Following a report from President Olmstead that in accordance with the resolution of the Board adopted March 6th, 1922, he had completed the sale of an additional \$1,000,000 capital stock of this bank, receiving therefor \$1,500,000 in cash, Mr. Kelly offered the following resolution which was seconded by Mr. Metschan and unanimously adopted:

‘Upon receipt from the Comptroller of the Currency of his approval of the increase of the capital stock of the bank from \$1,000,000 to \$2,000,000, with his instructions to change our books accordingly, the officers are directed to credit to the Undivided Profits Account the total amount of premium: viz : \$500,000 over and above the par value

received from the sale of the new stock, and following that credit, to transfer from Undivided Profits Account \$150,000 to Surplus, and also to transfer from the Undivided Profits Account to Profit and Loss the sum of \$388,114.12, which amount is then to be debited to the Profits and Loss Account and credited as follows: \$31,953.44 to Stocks and Bonds, \$356,160.68 to Loans & Discounts, to cover losses in these two accounts as determined by the Board, including those referred to in the Examiner's Report of the condition of this Bank, issued following his examination which began December 21st, 1921, and ended January 10, 1922.'

"On motion of Mr. Charlton, seconded by Mr. Kelly, the following resolution was then adopted:

'Following the increase of the Capital Stock of this Bank from \$1,000,000 to \$2,000,000 and the Surplus from \$250,000 to \$400,000, the officers of this Bank are directed to enter to subscription with the Federal Reserve Bank of San Francisco for 690 additional shares of its Capital Stock at the par value of \$100 per share.'

"On motion of Mr. Metschan, duly seconded by Mr. Kelly, Chairman was authorized to appoint a committee of three directors to make a general survey of the affairs of the Bank, including an examination of the income and expenditures, and with a view of making such suggestions and recommendations as it may consider advisable. As such Committee, the Chairman appointed Messrs. Menefee, Kelly and McDougall.'" (R., 98, 99.)

The evidence establishes that Messrs. Menefee and Kelly made a report as follows, August 16, 1922:

“To the Directors Northwestern National Bank:
Report and Recommendation of Committee Investigating Overhead.

Your Committee has made investigation of [339—10] officers employed and rents paid and submits for your consideration the following.

We find that the general opinion of ourselves and parties familiar with conditions in the Bank is that the list of officers as now constituted is based upon a much larger volume of business than the Bank now enjoys, in fact, ample to handle even more than the war time business of the bank. Also the rents paid for the bank premises are more than could be realized for the space occupied if used for commercial purposes. In view of the above, we hereby recommend:

1st—That the services of Vice-president C. L. Lamping be dispensed with, effective sixty days from date hereof.

2nd.—that the services of Wm. D. Stubbs, Ass't to the president be dispensed with upon thirty days notice from date hereof.

3rd—The monthly rental for bank premises be reduced not less than \$500.00 per month, effective Sept. 1st.

4th—The employment of an older and experienced head to the Credit Department.

Respectfully submitted,

(Signed) L. B. MENEFFEE.

GEO. H. KELLY.” (R., 43.) [340—

10-a]

On November 21, 1922, the Examining Committee of the Bank consisting of Charlton, Metschan and Kelly, made the following particular report:

“THE NORTHWESTERN NATIONAL BANK.

Portland, Oregon, November 21, 1922.

To the Board of Directors, The Northwestern National Bank of Portland, Portland, Oregon.

Gentlemen:

We, your Examining Committee, appointed at the annual meeting, beg leave to report that on November 13, 14, 15, 16, 17, 18, 20 and 21, 1922, we made a full and careful examination of the affairs of this bank as of date November 13.

We counted the cash, examined the bonds and all other securities; we checked the notes, collateral and real estate, checked the outstanding and certified checks, cashier's checks, time and demand certificates of deposit and overdrafts; we verified the outstanding stock certificates; verified the first clearings, examined the Expense Account and general affairs of the Bank, making a full and careful examination of same. We found the books correct.

We recommend as follows:

Notes.

States Auto & Truck Co.		Rediscounts not kept up. Recommend that defaulted contracts be taken up by the company.
Miniature Lumber Co.....	\$ 2,940	Should be handled in a more satisfactory manner.
Alaska Pacific Navigation Company.	21,641	Should be collected now, or get Mr. Burckhardt's guarantee.
H. R. Albee, Gen Agt.....	15,800	Should be reduced.
J. W. Biggs	3,000	First National Bank, Burns, Ore. When paper is taken not guaranteed look up carefully.
C. E. Bailey	190	Collect.
Bend Juniper Products Co.	17,500	Collect, or get security.
W. W. Bender	3,520	Collect.
Wm. Caldwell	400	Get security.
Carney & Maloney	500	Reduce.
Chocolate Truffles Co.....	5,721	Collect.
A. C. Churchill.....	1,800	Get Mrs. Churchill's signature and secure.
[341—11]		
E. J. Clough	32,300	Collect.
Columbia Creosoting Co...	10,500	Collect from guarantors.
R. G. E. Cornish	2,700	Reduce.

John & J. E. Cronin.....	11,465	Reduce.
G. L. Davenport	5,810	Reduce.
J. L. Donnolly.....	100	Collect.
A. L. Gage	3,500	Reduce.
Fannie L. Hamilton	340	Reduce.
T. Todd Hazen	225	Collect.
Elizabeth Heimbach	6,000	Collect.
A. M. Howell	3,050	Reduce.
N. F. Johnson	500	Collect.
J. Fred Larson	3,062	Collect.
E. C. Mears.....	300	Collect.
National Umbrella Mfg. Co.	802	Charge off.
Oregon State Farm Bu- reau	5,500	Collect.
C. W. Pallett	12,000	Collect.
J. M. Rieg	5,500	Reduce.
J. R. Thompson	200	Collect.
Toke Point Oyster Co.....	40,000	Reduce.
Wm. Umdenstock	1,500	Reduce.
Universal Tire Filler Co...	3,200	Reduce.
W. A. Williams	1,000	Reduce.

Overdrafts.

Overdrafts at the close of business on November 13 are excessive and should be collected.

Liquidation of the claim against the Merchants National Bank.

This matter should be brought to an early conclusion.

Large Lines and Slow Loans.

Large lines and slow loans as shown in the Ex-

aminer's Report of June 30 should have the careful attention of the officers and reductions should be made until placed in good condition.

Expense Accounts.

We wish to commend the officers on the reduction of approximately \$40,000 per annum in the operating expenses of the bank.

Respectfully yours,

(Signed) A. D. CHARLTON.

PHIL METSCHAN.

GEO. H. KELLY."

On the 16th day of January, 1923, M. C. Wilde, National Bank Examiner, was present at the meeting of the board of directors consisting of Price, Olmstead, Charlton, Pittock, Menefee, Skinner and others, and at his request a letter signed by the directors present was addressed to the Honorable [342—12] Comptroller of the Currency, Washington, D. C., reading as follows:

"At a meeting of the board of directors of the Northwestern National Bank of Portland, held on this date with Examiner M. C. Wilde, the general condition of the bank and the following matters of criticism were fully considered—slow and doubtful assets aggregating \$4,426,666.04 and \$539,418.44, respectively, and estimated losses, \$143,894.36.

Of the losses estimated \$125,183.20 has been charged off. This includes all losses estimated in the Examiner's report, excepting \$17,641.30 on a note of the Alaska Pacific Navigation Company. Unless this note is secured within ninety days, it will be eliminated.

Statutory bad debts \$285,499.57, and other overdue paper, \$1,873,579.32, are having proper and careful attention of officers and Discount Committee. A sincere effort will be made to dispose of the illegal real estate bonds, other real estate owned, and stocks carried over a five year period. Certificates of information will be attached to all real estate loans, and other matters pertaining to the improvement of our credit files will have proper and careful attention.

Directors are co-operating with the officers, and a united effort is being made to eliminate matters of criticism and improve the general condition of the bank." (R., 48, 49.)

This letter was transmitted on the 16th day of January, 1923, to the Comptroller by vice-president Mark Skinner, the witness on the stand.

Thereafter on June 21, 1923, the board of directors held another meeting with Examiner M. C. Wilde and addressed the following letter signed by the persons named to the Honorable Comptroller of the Currency at Washington, D. C., that is to say:

"June 21, 1923.

Hon. Comptroller of the Currency,
Washington, D. C.

Sir:

At a meeting held June 21st with Examiner M. C. Wilde, careful consideration was given by the undersigned directors of the Northwestern National Bank of Portland, Oregon, to all matters of criticism contained in the Examiner's report of exami-

nation of this bank, now under examination. [343—13]

Losses aggregating \$102,947.77 were charged off during the examination.

Slow Assets aggregating \$3,757,066.77, doubtful assets \$426,756.25, statutory bad debts \$1,020,068.72, other overdue paper \$711,396.01 and the Merchants National Bank, liquidating account, totaling \$484,699.34 listed undesirable in the report were considered in detail. These matters are having careful attention of officers and directors and efforts will be continued to improve this condition and reduce these amounts.

Large lines and other loans especially mentioned by the Examiner were called to our attention.

It is hoped to fill the three existing vacancies in the board of directors within thirty to sixty days.

The two unlawful real estate loans were eliminated during the examination, and the real estate bonds listed as unlawful will be eliminated shortly. Certificates of appraisal or information properly executed will be attached to real estate loans.

Our credit files have been improved since the previous examination and effort will be devoted toward a further improvement.

We shall endeavor to secure an appraisal on the assets of the Merchants National Bank not later than July 31st, which when completed will be submitted to your Examiner with a recommendation as to the action we desire taken concerning the same.

No dividends will be declared until the condition of the bank is materially improved and additional losses sustained will be charged off as rapidly as determined.

Assurance is given that directors and officers are co-operating in their efforts to improve the condition of the bank.

Respectfully,

GEO. H. KELLY	(Signed)	C. K. SPAULDING
PHIL METSCHAN	(Signed)	M. SKINNER
A. L. CHARLTON	(Signed)	O. L. PRICE
F. F. PITTOCK	(Signed)	EMERY OLMSTEAD
CHAS. H. STEWART	(Signed)	(R., 53, 54)."

Thereafter on August 21, 1923, the Examining Committee consisting of Metschan, Spaulding and Charlton made the following particular report:

“August 21, 1923.

To the Board of Directors The Northwestern National Bank of Portland, Portland, Oregon.

Gentlemen:

We, your Examining Committee, appointed at the annual meeting, beg leave to report that on August 13th to 21st, 1923, we made a full and careful examination of the affairs of this bank as of date August 13. [344—14]

We counted the cash, examined the bonds and all other securities; we checked the notes, collateral and real estate, checked the outstanding and certified checks, cashier's checks, time and demand certificates of deposit and overdrafts; we verified the outstanding stock certificates, verified the first clearings, examined the Expense Account and general

affairs of the Bank, making a full and careful examination of same. We found the books correct.

We recommend as follows:

Notes.

States Auto & Truck Company..	11,108.60	Get report from Wehrung. Take no more contracts.
C. D. Butler	300.00	Collect.
Commercial Corporation	900.00	Reduce.
E. J. Clough	32,794.18	Collect or get security.
Columbia Creosoting Company	10,000.00	Collect from guarantors.
G. L. Davenport	5,600.00	Collect.
Jos. M. Rieg	4,900.00	Collect.
Chas. C. Rose	6,200.00	Collect or get security.
W. U. Sanderson	5,000.00	Collect or secure.
W. H. Sanford	1,050.00	Collect.
George Scroggin	500.00	Collect.
Isaac Staples	32,500.00	Reduce.
Toke Point Oyster Co.....	40,000.00	Collect.
C. A. Macrum	4,600.00	Collect.
Oregon State Farm Bureau...	5,500.00	Collect.
Equity Discount Company....	4,700.00	Collect.
R. L. Gage	2,000.00	Reduce.
Herbert Gordon	5,800.00	Collect.
J. W. Hall	900.00	Collect.
Victor Invention Company....	1,300.00	Collect.
Baldwin Sheep Company.....		Have loan secured by Chat. Mtg.

Overdrafts.

Overdrafts at the close of business on August 13th should be promptly collected.

Liquidation of the claim against the Merchants
National Bank.

This matter is now in the hands of the Comptroller for final settlement.

Large Lines and Slow Loans.

Large lines and slow loans as shown in the Examiner's report of June 22nd are having the careful attention of the officers and in some cases substantial reductions have been made, and we earnestly recommend that further reductions be made as soon as possible. [345—15]

Expense Accounts.

We note a further reduction during the first six months of 1923 as compared with the first six months of 1922 of \$16,800.00 which is very satisfactory when you take into consideration that a reduction of \$40,000.00 was made in the year 1922, inasmuch also as the Bank has made a gain in net profits of \$87,000.00 over the corresponding period of the year 1922.

Respectfully yours,

(Signed) PHIL METSCHAN.
CHAS. K. SPAULDING.
A. D. CHARLTON."

(R., 107-107-109.)

Thereafter on December 18, 1923, the Examining Committee consisting of Metschan, Spaulding and Charlton made the following particular report:

“December 18, 1923.

To the Board of Directors of The Northwestern
National Bank of Portland, Portland, Oregon.

Gentlemen:

We, your Examining Committee, appointed at the annual meeting, beg leave to report that on December 10th to 18th, 1923, inclusive, we made a full and careful examination of the affairs of this bank, as of date December 10th.

We counted the cash, examined the bonds and all other securities; we checked the notes, collateral and real estate; checked the outstanding and certified checks, cashier's checks, Time and Demand Certificates of Deposit and overdrafts; we verified the outstanding Stock Certificates, verified the first clearings, examined the Expense Account and general affairs of the Bank, making a full and careful examination of same. We found the books correct.

We recommend as follows:

Notes.

Miniature Lumber Co....	2,805.00	Collect.
Saari Bros. Lbr. Co.....	3,765.35	Expedite settlement
J. W. Biggs.....	3,000.00	Collect.
Baldwin Sheep Co.....	222,000.00	Get security.
Berkeley Investment Co..	12,800.00	Reduce.
Neil J. Boyle.....	100.00	Charge off.
C. D. Butler.....	300.00	Charge off.
A. C. Callan	7,000.00	Collect.
E. J. Clough	32,300.00	Collect.
Commercial Corporation.	900.00	Collect.
Columbia Creosoting Co..	10,000.00	Collect. [346—16]
R. G. E. Cornish.....	2,396.00	Reduce.

Equity Distributing Co...	4,200.00	Collect.
A. L. Gage	2,000.00	Reduce.
Herbert Gordon	5,800.00	Collect.
L. D. Johnson	550.72	Collect.
Hamilton Johnstone	66.82	Charge off.
L. J. Kinney	4,938.47	Collect.
T. J. Loiselle	290.40	Charge off.
C. A. Macrum	4,600.00	Collect.
Geo. E. Miller	100.00	Charge off.
L. E. Parshall	600.00	Collect and secure.
Chas. C. Rose.....	6,200.00	Collect.
V. V. Sanderson.....	5,000.00	Collect.
Geo. Scroggin	500.00	Collect.
Visitor Inventions Co....	1,300.00	Charge off.

Overdrafts.

We believe that more care should be exercised in watching accounts which are habitually overdrawn.

Liquidation of the Claim against the Merchants National Bank.

No progress has been made since our last examination. We recommend that the officers take legal action immediately after January 1, 1924, to close the Merchants National Bank Liquidating Account.

Large Lines and Slow Loans.

We find that our officers are making some progress in the reduction of large lines and slow loans; but we believe a better result can be obtained by the organization of a department under a competent head to handle slow and doubtful loans and charged off paper.

Expense Account.

We find that the actual operating expenses during the past five months, as compared with the corresponding months of 1922, show a satisfactory reduction.

Respectfully yours,

(Signed) PHIL METSCHAN.

C. K. SPAULDING.

A. D. CHARLTON.'''

(R., 110, 111.)

Thereafter and on the 27th of March, 1924, Spaulding and Metschan as the Examining Committee made the following particular report:

“March 27, 1924.

To the Board of Directors of The Northwestern National Bank of Portland, Portland, Oregon.
Gentlemen: [347—17]

We, your Examining Committee, appointed at the annual meeting, report that on March 17th to 27th, 1924, inclusive, we made a full and careful examination of the affairs of this Bank as of date March 17th.

We counted the cash, examined the bonds and all other securities; we checked the notes, collateral and real estate; checked the outstanding and certified checks, cashier's checks, Time and Demand Certificates of Deposit and overdrafts, we verified the outstanding Stock Certificates, verified the first Clearings, examined the Expense Account and general affairs of the Bank, making a full and careful examination of same. We found the books correct.

We recommend as follows:

Notes.

Allen & Hebard	14,000.00	Reduce and get security.
States Auto & Truck Co. . .	15,000.00	Collect.
Miniature Lumber Co.	2,790.00	Collect from J. S. Boyer.
Berkley Investment Co.	12,800.00	Force Collection.
Denton G. Burdick	18,500.00	Collect.
A. C. Callan	7,000.00	Collect.
G. L. Davenport	5,561.33	Collect.
Equity Distributing Co.	3,700.00	Collect.
A. L. Gage	3,000.00	Collect.
E. T. Geer	15.00	Charge off.
J. Hebard	7,000.00	Reduce and get security.
J. A. Macrum	4,600.00	Collect.
D. M. Pierce	2,900.00	Collect.

Overdrafts.

We note that overdrafts on date of examination are not so large as usual. We recommend that the officers continue to discourage all those who make a practice of overdrawing.

Baldwin Sheep Company.

In our examination of December 18, 1923, we recommend that security be obtained for this loan, which at that time amounted to \$220,000.00. We recommend that it be reduced in the sum of at least \$200,000.00 between now and July 1, 1924.

Large and Slow Lines.

Progress has been made on these Large Lines and Slow Loans and the department which we

recommend to be organized in our December report is functioning. It is too early for a report to be had from the manager of that department, but an investigation of his work leads us to believe that very satisfactory results will be obtained.

Expense Account.

Expenses for January of this year show a considerable increase over January, 1923, but are satisfactorily accounted for by an increased charge for taxes, advertising and salaries, all of which has been approved. February expense account is slightly under that of February, 1923.

Respectfully yours,

(Signed) CHAS. K. SPAULDING.

PHIL METSCHAN." [348—18]

On the 28th of July, 1924, J. W. McIntosh, Deputy Comptroller, Treasury Department, Washington, D. C., wrote the following letter to the board of directors of the Bank:

“TREASURY DEPARTMENT,
Washington.

July 28, 1924.

Board of Directors

Northwestern National Bank,

Portland, Oregon.

Dear Sirs:

The report of an examination of your bank, completed July 11, a copy of which should be in your possession, has been received, and shows a condition not satisfactory to this office.

Reports of examination of your association since April, 1921, have been carefully reviewed and show that during the intervening time your bank has been subject to continuous criticism because of a constant accumulation of slow and doubtful assets. The following figures will substantiate this statement:

Reports of Examination	Slow	Doubtful
April 1921	\$4,932,220	\$446,030.
Dec. 1921 & Jan. 1922	4,879,618	457,638.
June 1922	3,188,187	474,706.
Dec. 1922 & Jan. 1923.....	4,426,666	539,418.
May & June 1923	4,050,114	618,396.
Dec. 1923 & Jan. 1924	4,325,182	596,020.
June 1924 & July 1924	4,346,073	528,410.

During this time the Merchants National Bank liquidating account appears in each report in the following figures:

Report of Examination

April 1921	\$ 449,120.
December 1921	472,137.
June 1922	490,359.
December 1922	468,033.
May 1923	484,699.
December 1923	510,873.
July 1924	535,445.

In the current report \$200.00. of the amount is classed as doubtful and it is quite probable that an additional loss will result therefrom. Numerous plans have been proposed, having in view the expediting of liquidation of this account and although efforts have been made to carry them through they

have all been unsuccessful. The account has been at practically the same status for a period of eight years and it is urged that some definite measures now be taken to obtain immediate action from the liquidating committee in the way of relieving your bank of this undesirable account. Please advise what will be done in this connection. [349—19]

The aggregate of slow and doubtful assets, as shown on page twelve, also include items representing judgments, claims, etc., carried on bond securities, recovery depending on liquidation, the outcome of which is not known, and "other real estate" which has been acquired in satisfaction of debts previously contracted.

The examiner is rather encouraging along this line, stating that both officers and directors appear to be doing everything possible to remedy conditions; and that a more conservative policy of granting loans has been adopted and that no new loans of slow or doubtful character are being made. This office desires, however, to urge the management to even greater efforts and to impress upon the directors and officers the fact that energetic efforts and vigorous methods seldom fail to accomplish a great deal. It is hoped by the time of the next examination that the collectibility of paper now held will be definitely demonstrated and that its character will have been improved to an extent which will result in a minimum of loss to the bank.

Particular attention is directed to the following

lines and it is urged that they be substantially reduced by the time of the next examination.

Dufur Farm and Fruit Co. \$524,746.

(All listed as slow, large loss probable unless orchard is disposed of. Deal now pending for disposition)

Bankers Discount Corporation 770,112.

(Shows an increase since last examination and is all listed slow or doubtful. Loss probable)

Pacific Grain Co. 441,122.

(All listed slow and loss probable)

C. S. Hudson, et al. 244,543.

(Large part listed as slow, some doubtful in bad debts)

Northwest Fruit Products Company and Phez Company 192,000.

(All listed slow and doubtful)

J. E. Wheeler, interests 584,500.

(All listed slow in current and overdue paper)

This office desires to keep in close touch with the situation and in order to do so requests that you forward reports on the thirtieth of each month, beginning August 30, until otherwise advised, showing the progress made in collecting or otherwise satisfactorily adjusting all slow and doubtful loans and other assets included in the examiner's classification of slow and doubtful throughout the report.

In your first report please also advise what arrangements has been made to expedite liquidation of the Merchants National Bank account and

whether any results have been obtained up to that time.

Respectfully,

(Signed) J. W. McINTOSH,
Deputy Comptroller.”

(R., 62, 3, 4, 5.) [350—20]

Thereafter the action of the Board on this matter was August 20, 1924, at which were present Olmstead, Metschan, Spaulding, Pittock, Stewart, Skinner, and among other things,—

“The official copy of the Examiner’s Report of the condition of the Bank as of date June 14, 1924, was presented to the directors, and letter of the Chief National Bank Examiner, transmitting same, addressed to the board of directors in connection with said report was read by the secretary.

A letter from the Comptroller of the Currency dated July 28, 1924, addressed to the board of directors relative to matters referred to in the recent report of the National Bank Examiner was read to the board.” (R., 58.)

And at this meeting also the following proceedings took place:

“Mr. Olmstead brought up for discussion the purchase by the bank from the Northwestern Fidelity Company of the Bank building, and furnished the directors with a statement showing the cost of the building, the estimated purchase price, and the net earning. After considerable discussion Mr. Kelly made a motion which was supported by Mr. Spaulding, authorizing the directors to negotiate with the stockholders of the Northwestern Fidelity

Company, keeping in mind the following contingencies:

1. To receive from the Comptroller of the Currency permission to purchase the building by the Bank.

2. To arrange with the Pittock Estate to purchase their preferred stock of four thousand shares, at par value, or \$400,000 with the understanding that such common stock as they may own would be included without cost to the Bank.

3. To purchase from the Kamm Estate 750 shares of preferred stock at par value or \$75,000.

4. To secure the remaining common stock outstanding at a price not exceeding fifty cents on the dollar, of its par value.

5. To purchase from the Pittock Estate such notes as they may hold, signed by the Northwestern Fidelity Company, at face and accrued interest.

6. To have the Pittock Estate agree to take out of the Bank's assets the notes of the Baldwin Sheep Company, the amount to be deducted from the proceeds of the sale of the building company stock and notes.

7. It was understood that the president of the Bank would submit this proposition to the directors who were present, and get their approval [351—21] of the plan, before negotiations were started. The motion was unanimously carried.

There being no further business to come before the meeting, it duly adjourned.

EMERY OLMSTEAD,

Chairman.

M. SKINNER,

Secretary."

Thereafter on September 8, 1924, the board of directors replied to this letter of the Comptroller as follows:

"September 8, 1924.

Honorable Comptroller of the Currency,

Washington, D. C.

Sir:

In accordance with your letter of July 28th, we list below payments and reductions made in connection with various items noted in the Examiner's recent report of the condition of this bank.

Statutory Bad Debts and other Overdue Paper:

Note M. L. Jones, reduced	392.5
Note R. N. Elliott, paid by Acceptance of note of certain individuals, which note is secured.....	11,138.0
Note Pacific Grain Co. Paid in full	12,127.3
Note Miller Bros. Grain Co.Reduced	8,527.5
Note Portland Wool Whse. Co.Reduced	377.8
Note D. M. Stuart	1,120.0
Note G. F. Tucker	191.6
Note J. H. Dobbin	392.5
Note Donald W. Green	389.5
Note C. L. Davenport	155.4
Note First State & Savings Bank, Klamath Falls, Ore.Reduced	604.5

note C. S. Harper and R. P. Bowman.....	Reduced	300.00
note, Reedsport Lumber Co.....	Reduced	2,285.00
Low and Doubtful Paper:		
note R. G. E. Cornish.....	Reduced	50.00
note Northwest Livestock Loan Co.....	Reduced	5,301.87
note Equity Distributing Co.....	Reduced	380.00
note Charles E. McCulloch and Donald W. Greene	Reduced	400.00
note J. G. Megler & Co.....	Reduced	5,000.00
note Northwestern Fidelity Co.....	Reduced	17,000.00
notes Davin Michellod Sheep & Land Co...	Reduced	32,500.00
note Edgar B. Piper.....	Reduced	200.00
Chez Co. Certificates of Indebtedness Series		
“B” (Listed under ‘Large Lines’)....	Reduced	25,000.00

352—22]

Other Loans Especially Mentioned

note Arthur Anderson Fish Co., Paid.....		10,000.00
note Margaret Burrell Biddle.....	Reduced	16,000.00
note First Bank of Council, Ida.....	Reduced	5,900.00
note Charles H. Greeley.....	Reduced	489.90
note Miller, Calhoun, Johnson Co.....	Reduced	20,000.00

Referring to your comments on the Merchants National Bank Liquidating Account,—in the Fall of 1922, our Board had a conference with your Examiner, Mr. Wilde, and suggested to Mr. Wilds that some action by the Department be taken to close the account, and we think Mr. Wilde so advised the Department. During November of 1922, Mr. Olmstead, President of our Bank, called on Deputy Comptroller Kane, who stated that the Comptroller’s Department would take the matter up with the liquidating Committee of the Merchant’s Na-

tional Bank through Examiner Wilde, and have the assets sold and the assessment levied. We know that Mr. Wilde worked with the Liquidating Committee for some six or nine months to bring about a settlement. Since then we have not been advised of any action. Mr. Olmstead, our President, will be in Washington sometime in October, and will call on you and discuss the matter at that time.

All items listed in the Examiner's report as losses, aggregating \$99,019.90, have been charged to Profit and Loss.

All other matters especially mentioned in your report are having the continued attention of the Directors and Officers of the Bank.

Respectfully,

(Signed.)

EMERY OLMSTEAD. M. SKINNER.

A. D. CHARLTON. C. K. SPAULDING.

F. F. PITTOCK. CHAS. H. STEWART.

O. L. PRICE." PHIL METSCHAN."

(R., 66-7-8.)

On October 14, 1924, the Examining Committee consisting of Spaulding, Charlton and Metschan made a special report as follows:

"October 14, 1924.

To the Board of Directors of The Northwestern National Bank of Portland, Portland, Oregon.
Gentlemen:

We, your Examining Committee, appointed at the annual meeting, report that on September 29th to October 14, 1924, inclusive, we made a full and

careful examination of the affairs of this bank as of date September 29, 1924.

The cash was counted under our direction; we examined the bonds and all the other securities; we checked the notes, collateral, and real estate; checked the outstanding and certified checks and cashier's checks, Time and [353—23] Demand Certificates of Deposit and Overdrafts. We verified the outstanding stock certificates; verified the first clearings; examined the Expense Account and general affairs of the Bank, making a full and careful examination of the same. The books we found to be in balance.

We recommend that the following be requested to reduce their notes:

Allen & Hebard	14,000.00
Berkeley Investment Company	12,800.00
Cartozian Brothers	75,000.00
Cascade Construction Company	2,500.00
Cascade Investment Company	2,500.00
F. B. Layman	6,500.00
C. D. McCoy	500.00
Miniature Lumber Company	2,700.00
Equity Distributing Company	3,700.00
L. Hebard	7,000.00
O. M. Pierce	2,900.00

We recommend that the following notes be collected, using the Courts if necessary.

Albatross Metal Furniture Co.	13,802.73
G. L. Davenport	5,561.33
A. C. Callan	7,000.00
A. L. Gage	3,000.00

C. A. McCrum	4,600.00
States Auto & Trust Company	15,000.00

We especially recommend that J. E. Wheeler be requested to pay the various notes held by this bank, on which he is either the endorser or maker, or that all of his line be secured.

Overdrafts.

We note that the overdrafts on the date of the examination were unusually large. We recommend that the officers, in order to discourage all those in the habit of such practices, notify them by mail that items drawn on this Bank with no provision made to meet them will be dishonored.

Large and Slow Lines.

Some progress has been made in the reduction of the large lines and slow loans, and we recommend that the Collection Department, which was started at our suggestion, make monthly reports to the Board of Directors.

Expense Account.

Our examination of the above account leads us to believe that expenses are being held down, and that the bank is being operated as conservatively as can be expected.

Respectfully yours,

(Signed) CHAS. K. SPAULDING.

A. D. CHARLTON.

PHIL METSCHAN."

(R., 116-7.)

And on the 14th of October, 1924, that also re-

ported to the Board of Directors as follows: [354—24]

“October 14, 1924.

To the Board of Directors of The Northwestern National Bank of Portland, Portland, Oregon.
Gentlemen:

In examining the affairs of this bank covering the period from September 29th to October 14, 1924, we beg leave to report as follows:

Deposits on September 29, 1924, totalled \$19,011,900.21. Details of the deposits are given, herewith:

	3-17-24	9-29-24
Commercial Accounts..	9,500,966.59	9,917,102.54
Public Money	1,306,182.00	725,000.00
Savings Accounts	5,096,341.79	5,421,603.82
Bank Accounts	2,669,331.70	2,948,193.85
	<hr/>	<hr/>
Total Deposits	18,572,822.08	19,011,900.21
Increase	439,078.13	
	<hr/>	
	19,011,900.21	

These figures reveal a very satisfactory growth, even with the loss in deposits of \$725,000 of public money, we have made a net gain of \$439,078.13; and on this date our net gain is much larger than that,—\$1,700,000 above the last call.

There are in the employ of the bank 126 persons, with a monthly payroll of \$24,676.65. Our monthly light and rent bill amounts to \$3,798.05. Furniture and fixtures are being charged off at the rate of \$1,000 a month, and at the present time are being

carried on our books at \$33,000. Among the large items of expense and bank operation is interest paid on various accounts; herewith a tabulation; Amount of interest paid, and amount set aside monthly for Savings.

	March.	September.
Account	11,238.24	11,790.79
Interest Paid on Commercial		
Accounts	1,764.73	2,365.04
Int. Paid on Public Money....	2,923.28	1,906.73
“ “ “ Spruce Account..	730.56	829.71
“ “ “ Time Certificates	451.10	236.44
“ “ “ Bank Accounts ..	3,388.36	3,679.82
“ “ “ B/P R/D and Diff. Res.	262.29	
Texas (1923)		56,000.00
Donations (Six months' period).....		3,500.00
Traveling Expenses (6 months' period)..		3,000.00
Gross Income (6 months' period).....		483,000.00
Gross Expense (6 months' period).....		390,000.00

We have a Collection Department operated at the cost of \$1,200.00 a month, under the management of Mr. William Kennedy. We have never had a report from this department, because we realized that it would take six or seven months to get the department under way; but we recommend that in the future monthly reports of the results of the work done by Mr. Kennedy and his staff be reported to this Board. [355—25]

“The bank owns real estate valued at \$156,488.72, which we believe to be a conservative valuation; but

the liquidation of this asset is very slow, and an increased effort should be made to dispose of it.

We have notes, claims, bonds, etc., totalling nearly \$2,000,000, which are nonproductive. We do not believe that there will be any considerable loss from these accounts, but recommend that some plan be devised by the officers and board of directors to speed up their liquidation.

In our last examination we found that there were slow loans in the bank amounting to \$3,600,000 on which reductions in the amount of \$128,774.98 have been made during the last six months.

There are a number of customers of the bank having combined loans amounting to \$2,000,000 whose balances are not compensating. We recommend that they be required to carry adequate balances.

Respectfully yours,

(Signed) CHAS. K. SPAULDING.
A. D. CHARLTON.
PHIL METSCHAN."

(R., 118-19-20.)

On the 9th of April, 1925, E. W. Stearns, Deputy Comptroller, wrote the Board of Directors of the Bank as follows:

“TREASURY DEPARTMENT,
Washington.

April 9, 1925.

Board of Directors,
Northwestern National Bank,
Portland, Oregon.

Dear Sirs:

The report of an examination of your bank, completed February 24, 1925, a copy of which should be in your possession, has been received, and has been compared with the report of examination completed July 11, 1924.

In office letter of July 28, based on the July report, comparisons were submitted for your consideration, showing the lack of progress evidenced in improving the bank's condition from the standpoint of unsatisfactory assets from examination to examination since 1921.

A comparison of the February with the July report, it is note with satisfaction, shows progress from this standpoint, total loans having been reduced approximately \$888,000, and a smaller proportion thereof being classed as slow and doubtful. The amount of adversely classified loans, and other assets, however, is still entirely too large, doubtful alone amounting to more than surplus, undivided profits and reserve accounts. Losses estimated by the examiner in the amount of \$381,043.61, charged off during examination, [356—26] largely impaired surplus. It is, therefore, quite

necessary that there be no relaxation of efforts along the line of affecting collections, or other satisfactory adjustments, of the assets included in these classifications. The examiner again reports that the management is working earnestly to improve the bank's condition, and it is not doubted that an even greater degree of improvement will be shown at the time of the next examination. You, of course, recognize the importance of improving the character of paper which cannot be collected to an extent which will preclude the necessity of calling it a loss when the bank is next examined.

Your failure to effect any change in the Merchants National Bank liquidating account is most disappointing. It is not understood why you are willing to permit this item to remain in the bank from examination to examination, subjecting it to continuous criticism. It would seem that the directors would be desirous of relieving the bank of this asset, and at the same time from the constant criticism which it incurs. It is again urged that some definite action in this matter be taken immediately.

In office letter of July 28, several large lines were listed for your particular attention, with the recommendation that they be substantially reduced prior to the next examination. It is observed, on comparison, that reductions have occurred in the Bankers Discount Corporation line, the C. S. Hudson line, and the Dufer Fruit and Farm Company line, while the Northwest Fruit Products Company and the J. E. Wheeler lines have been increased.

All of these lines should continue to have your close attention, with a view to obtaining further reductions within the next few months. Attention should also be given other lines listed at supplemental sheet 6, and substantial reductions obtained wherever possible.

The Pacific Grain Company Line, in the previous report, shown at \$441,122. comprising various notes of different companies, and listed as a large line, it is reported, has been converted into stock of the Davin Michelled Sheep and Lamb Company, in the amount of \$273,259.97, and *and* a direct note of \$70,500 of the company. The note, the examiner states, will be worked out this year from sales of lambs and wool. The liquidation of the \$273,259.97 item, carried in bonds, securities, and representing the total issue of stock of the company, depends upon the sale of the ranch. It is hoped you will be successful in realizing on this stock within a reasonable time.

The examiner, in a separate advice, has informed this office of the purchase of your new bank building since the previous examination. It appears that this property was placed on the books at a value in excess of the purchase price, and that the excess was used with other undivided profits in charging off estimated losses. A letter of appraisal, from a realtor in Portland, has also [357—27] been submitted, stating that the valuation of the premises in its entirety is \$2,500,000. While no question is raised as to the soundness of this statement, you are advised that the generally accepted policy, and

the one advocated by this office, is to carry real estate at conservative figures, and preferably that it be under valued than over valued. You are, therefore, requested to give this item such attention as is necessary in line with this idea.

It is desired that you continue forwarding monthly reports, beginning April 20, showing the changes effected in all loans set up throughout the report of examination, and that you attach to each report a copy of your daily statement as of the date the report is written. In addition to containing information in regard to changes effected in adversely classified loans, the reports should contain advice as to the progress made in improving the bank's condition along other lines, and your first report should state definitely what action will be taken in regard to the Merchants National Bank liquidating account.

The examiner, in a separate communication, advises that President Olmstead contemplates another visit to this office during which he proposes to again urge the appointment of a Receiver for the Merchants National Bank. Whatever business may call Mr. Olmstead to this office, he may feel confident that he will be accorded a courteous reception. His attention is invited, though, to office letter of January 14, wherein he was informed that the Comptroller was unwilling to appoint a receiver for the Merchants National Bank, until and unless a judgment has been obtained against that association. You are now respectfully informed that the decision of the Comptroller expressed at that time is final

and that a receiver will not be appointed unless a judgment is obtained.

Respectfully,

(Signed) E. W. STEARNS,
Deputy Comptroller.”

(R., 71-2-3-4.)

Upon this the Board of Directors held a meeting on the 15th of April, 1925, and the following action took place:

“The official copy of the Examiner’s Report of the condition of the bank as of date February 2, 1925, was presented to the Directors, and letter of the Chief National Bank Examiner, transmitting same, addressed to the Board of Directors in connection with said Report, was read by the secretary.

A letter from the Comptroller of the Currency dated April 9, 1925, addressed to the Board of Directors, relating to matters referred [358—28] to in the recent report of the National Bank Examiner was read to the Board.” (R., 69.)

Thereupon on the 21st of April, 1925, the board of directors made reply to the Comptroller of the Currency as follows, to wit:

“April 21, 1925.

Hon. Comptroller of the Currency,

Washington, D. C.

Sir:

Below please find memoranda of payments and reductions made up to April 20, 1925, in connection with loans referred to in the Examiner’s report of

the condition of this bank as of date February 2, 1925:

Statutory Bad Debts and Other Overdue Paper:

Account of D. M. Stuart, balance paid	36,240.00
Account of C. S. Hudson, et al. Reduced	500.00
Account of Deschutes Investment Co. Reduced.....	5,000.00
Account of J. G. Megler & Co. Paid.....	4,500.00
Low and Doubtful Paper:	
Account of Allen & Hebard Co. Reduced	3,000.00
Account of Bankers Discount Corp. Reduced.....	576.42
Account of J. R. Blackaby, reduced	3,000.00
Account of Charles H. Greely, reduced	500.00
Account of C. S. Harper and R. P. Bowman, Paid...	1,900.00
Account of Portland Storage Battery Co. Paid	7,000.00
Account of F. H. Gaulke, reduced	3,180.46
Account of State Bank of Metolius, Ore. Reduced...	3,500.00
Account of Northwest Auto Co. Reduced	187.50
Account of Edgar B. Piper, reduced	250.00
Account of Redmond National Bank, Redmond, Ore. Reduced	2,140.10
Account of Reedsport Lumber Co. Redmond	136.63
Large Lines:	
Account of Pittock & Leadbetter Co., Paid	52,500.00
Account of F. W. Leadbetter, Paid	150,000.00
Other Loans Especially Mentioned:	
Accounts of Baldwin Sheep Co. Reduced	165,000.00
Account of W. S. Boss, Paid	1,500.00
Account of Fag-O-San Sales Co. Paid	1,390.00
Account of Etta L. Higgins, Paid	1,000.00
Accounts of Geo. L. and J. A. McPherson, Reduced...	1,300.00
Accounts of Oregon Pulp & Paper Co. Reduced	10,000.00

Note of M. Sanders & Co. Reduced	7,500.00
Note of Titus Mfg. Co. Reduced	2,500.00
Notes of Willamette Valley Lbr. Co. Reduced.....	48,860.00

All matters referred to in the Examiner's Report, especially the larger lines and doubtful paper, together with the recommendations contained in your letter of April 9th, are now having and will continue to have the attention of the Officers and Directors of the Bank. [359—29]

Relative to the indebtedness of the Merchants National Bank, for your information we enclose copy of letter addressed to the Liquidating Committee of said bank under date of March 19th. The plan outlined in this letter is now having the consideration of the committee in charge of the Merchants National Bank affairs, and it is anticipated that we will have a definite reply to our proposal on or before June 1st. In any event it is our intention to bring this matter to a final conclusion at the earliest possible date.

Enclosed please find copy of daily balance sheet, as of date April 20, 1925, as requested.

Respectfully,
(Signed)

EMERY OLMSTEAD.	A. D. CHARLTON.
PHIL METSCHAN.	CHAS H. STEWART.
O. L. PRICE.	M. SKINNER.
C. K. SPAULDING.	F.F. PITTOCK."

(R., 76, 77.)

On the 18th of May, 1925, directors Metschan, Charlton and Spaulding as the Examining Com-

mittee reported to the board of directors as follows:

“May 18, 1925.

To the Board of Directors The Northwestern National Bank of Portland, Portland, Oregon.

Gentlemen:

We, your Examining Committee, appointed at the annual meeting, report that on April 27th to May 9th, 1925, inclusive, we made a full and careful examination of the affairs of this bank as of date April 27th.

We counted the cash; we examined the bonds and all other securities; we checked the notes, collateral and real estate; checked the outstanding and certified checks, Cashier’s checks, the time and demand certificates of deposit and overdraft; we verified the first clearings; examined the Expense Account and general affairs of the bank, making a full and careful examination of same. We found the books correct.

We recommend that the following be requested to reduce their notes:

Allen & Hebard	15,000.00
J. G. Arnold	6,500.00
Berkeley Investment Co.	10,696.25
Carleton Inv. Co.	3,500.00
Hauser Bros.	19,500.00
Miniature Lumber Co.	2,672.12
Lockwood Hebard	7,000.00
W. U. Sanderson	5,000.00

On the Hudson, Sather and Ellis notes we recommend that accounts owing to us and guar-

anted by Hudson, Sather and Ellis be collected and that the guarantors be notified that substantial reductions [360—30] must be made each month.

We also recommend that the Glenn E. Miller indebtedness of \$42,900.00 be charged down twenty per cent.

Large and Slow Lines.

Substantial progress has been made in the reduction of Large and Slow Lines, all of which we have carefully investigated. Satisfactory collections have been made of accounts heretofore charged off, but every energy of the organization should be put forth to hasten the liquidation of these lines as rapidly as possible in order to put the bank on a dividend paying basis.

Respectfully Yours,

(Signed) PHIL METSCHAN

A. D. CHARLTON.

CHAS. K. SPAULDING.”

(R., 121, 2.)

On October 23, 1925, the board of directors wrote the Comptroller of the Currency as follows:

“October 23, 1925.

Hon. Comptroller of the Currency,

Washington, D. C.

The undersigned directors of the Northwestern National Bank met October 23, 1925, with Chief National Bank Examiner, Mr. E. E. Harris, and National Bank Examiner, Mr. M. C. Wilde, at which meeting there was discussed and called to our attention the various matters of criticism, and the

unfavorably classified assets shown in the recapitulation of the Examiner's report completed as of this date.

The undersigned directors have assured your Examiners that from their own and personal knowledge, or from reports and information furnished them, that are believed responsible and reliable, the value of assets acquired from the Merchants National Bank, now carried on the bank's books at \$498,948.04, is in excess of the carrying figures, and of sufficient value to protect the bank against further loss in this account, notwithstanding the statement contained in President Olmstead's letter dated August 1st, 1923, addressed to your Examiner, giving a much lower valuation at that time, and noting the Examiner's statement to the directors that he does not share the Directors' optimistic view concerning the valuation placed on these assets.

In accordance with our agreement with your Examiners, we will continue to apply our profits as earned to retire the balance of the paper listed as losses in the Examiner's report. Furthermore we have exercised an option for the sale of our banking house, which, if exercised, will yield a profit of over \$200,000. When this profit is realized, it will be applied on the Examiner's estimated doubtful paper.

Serious consideration will be given to the suggestion and recommendation of your Examiners that a [361—31] corporation be organized among the shareholders of the bank for the purpose of pur-

chasing as much as possible of the non-income producing assets.

Assurance is given that the management and directors of this bank will continue their earnest endeavors to place this bank in a more satisfactory condition, and serious consideration will be given to all suggestions offered by your Examiners, for the welfare and benefit of the bank.

Respectfully,

(Signed)

CHAS. H. STEWART.	F. F. PITTOCK.
NATT McDOUGALL.	EMERY OLMSTEAD.
A. D. CHARLTON.	O. L. PRICE.
PHIL METSCHAN.	M. SKINNER.
CHAS. K. SPAULDING.”	

(R., 140, 41.)

On November 17, 1925, the Comptroller of the Currency wrote the Board of Directors as follows, to wit:

“TREASURY DEPARTMENT,

Washington.

November 17, 1925.

Board of Directors,

Northwestern National Bank,

Portland, Oregon.

Dear Sirs:

The report of an examination of your bank, completed on October 23, by National Bank Examiner M. C. Wilde, has been received and, as you will note by the copy which should be in your hands, assets classified as slow, doubtful or as losses amount

in the aggregate to \$4,498,919.21. Estimated losses, however, are less than \$177,000, and if it were certain they were not larger no concern would be felt regarding the situation. Among doubtful assets listed at \$534,000, and slow assets listed at \$3,788,000 there are certain, however, to be additional losses.

The records show that during the past five years the bank has charged off losses amounting to \$1,617,000, and the examiner advises that most of the losses have been sustained upon items that were part of the assets of the bank in 1920. Reports of examinations during that year showed losses of much smaller amount. In other words, the condition of the bank, as reflected by the reports, was much better than the future proved it actually to be.

In 1920 the bank was entering upon the deflation period and it was no more than human to expect a return of improved economic conditions a great deal sooner than they actually came. Such improved conditions were long postponed, however, so that low-grade assets instead of getting better for worse, with the result in your case that losses far exceeded the examiner's estimate. It is probably not necessary to contend with a situation of this sort now and conditions may get better instead of get worse. Whether the business of some of your borrowers, however, notably your sheep raisers, can receive any further [362—32] assistance from improved conditions is a matter of opinion.

Suffice it to say that with sub-standard assets listed by the examiner at 20 per cent of your total re-

sources, losses in the amount he mentioned seem a very conservative estimate. It is thought that the bank will be fortunate indeed if it escapes total losses of several times the amount. The bank has large capital and some surplus, but if all known losses were determined it would not be surprising to find that an impairment of capital existed.

The examiner stated that some consideration was given during the examination to the organization of a separate company with capital of \$500,000 to relieve the bank of some of its assets of frozen character, but ultimately collectible. Of course the degree of assistance afforded to the bank by the elimination of this amount of assets would depend upon the character of those removed. If the amount were used to take out actual losses it would be a great deal more helpful than if it were used to take out assets which were slow but which the bank could ultimately collect itself. It is believed, however, that the directors should formulate some plan to take out of the bank a far greater amount of undesirable assets than half a million dollars. When it is considered, as the examiner says, that \$1,750,000 of the bank's loans and other assets produce no revenue, its unfavorable effect upon the earnings of the bank, and consequently upon its ability to work out of its present undesirable situation, is evident.